Symposium & Debate

Symposium on Shlomi Segall's Health, Luck, and Justice. *Universidade do Minho, 2012.*

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Global Health Justice: On the Political Determinants of Health

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I. Introduction

Segall's proposal for health justice presents an internal status quo bias. It accepts an international order that is intrinsically incompatible with the compensatory mechanism for global inequities in health that his theory advocates. Consequently it cannot justify the prominent role that a luck egalitarian theory of health justice is supposed to have within a general conception of justice. Global health inequity is the largest and most severe challenge to any theory of health justice. The luck egalitarian answer to this test should be able to justify the political constraints on those institutions that regulate the social determinants of health on a global scale and what degrees of self-determination are compatible with the realization of this goal. Segall's proposal is internally inconsistent because it presupposes at the international level a political division of labour that he considers incompatible with health equity at the sub-state level. The political determinants of global health must be explicitly taken into account in the "structure of justice" and any international accommodation must be explicitly justified against a background conception of justice that is cosmopolitan 'in substance'.

ETHICAL PERSPECTIVES 19, no. 2(2012): 277-334.

doi: 10.2143/EP.19.2.2160707

II. The Nature and Justification of the Project

The purpose of *Health, Luck, and Justice* is to defend a luck egalitarian theory of justice in health. This task is articulated in three differentiated parts, each of them devoted to a specific aspect. We also observe that the reflection follows a sequence in which the discussion is progressively broadened in depth and scope. The first part focuses on questions of justice in healthcare. The second part incorporates the recent turn regarding the social determinants of health with the subsequent re-dimensioning of the impact of access to healthcare in achieving health proper. The third part "applies the theory to the particular issue of political borders" (6). Under the heading Health without Borders, Segall analyses the aforementioned problems of access to healthcare and the just distribution of the social determinants of health through sub-national and international political borders. In the first case, Segall discusses and rejects possible justifications for the devolution and fragmentation of healthcare systems. In the second case, he examines the huge disparities in global health from a luck egalitarian perspective.

As the author confesses, the book is the result of a personal undertaking of an academic challenge. Health had been an elusive topic for luck egalitarians and the time was ripe to try to show the fruitfulness of a specific theory of justice in health from a luck egalitarian perspective. The timing was also crucially coincidental with the socio-epidemiological turn in the WHO. Segall rightfully questions: If 'healthcare' is no longer special, what is the point of a theory of justice in health proper. If we shift our focus in the debate form access to medical assistance to the surrounding social conditions within which the population is born, grows, lives, works, interacts and ages, then a theory of justice has to take into account the impact of those social conditions that have a specific impact on one specific dimension in the quality of the life of the people. Would it not be better to focus on the overall quality of life of the population? Like matryoshka dolls, we could assimilate the more limited and partial approaches, eventually dissolving all social determinants of health into the social conditions that determine the welfare and the distribution of access to advantages.

Segall accepts the challenge and proceeds by inverting the burden of proof. Health is such an important and basic dimension that we cannot even have a correct understanding of the concept of social justice without a specific understanding of what would be a just social distribution of health. Here the author relies explicitly on Sen's defence of the concept of Health Equity (Sen 2002). However, pointing out the need for a detailed exploration of what health means for social justice is just part of the job. Different accounts may be provided in terms of central human capabilities, opportunities for welfare, and opportunities to develop life plans, which explain the causal web of psycho-social determinants of population health. We can even provide the most sophisticated understanding of the fateful and pervasive role of luck in our health. However, the role of the political philosopher does not stop there. The original paradigm of justice in healthcare had the clear and specific practical intent of proposing guidelines for the adjudication of scarce resources and for the design and reform of healthcare systems. What is the point

of a theory of just health proper? Is it possible to specify a proper domain that does not merge with a theory of justice as equal opportunity for wellbeing? Even if we presume this is the case, what is the relationship between both theoretical activities? Are they compatible?

Segall answers positively by holding that despite its relevant significance for a general theory of justice, justice in health is still a partial theory and that we should achieve an ideal theory (95). In Segall's characterization, the partial theory of health justice has a contributive explanatory function in illuminating a great deal of the wellbeing currency of a general theory of luck egalitarian justice. And this partial theory, if we are aware of the possible trade-offs within the more general framework, has also some legitimate practical relevance for policy guiding. "We could, however, think of some mundane and practical reasons that make it a worthwhile goal identifying what justice in health requires. The World Health Organization, for example, might be seen to require guidelines for a just distribution of global health. In that case, philosophers are called upon to help ascertain what such a policy would be. WHO is probably not concerned with the just allocation of all conceivable goods but rather in the just allocation of health alone. Rather than turning their noses up to such a challenge, philosophers, it seems to me, ought to embrace it and respond to it" (94).

Unfortunately, the practical intent dormant in this project is under-theorized. An explicit discussion of the relationship between applied and ideal theory would be very rewarding. For instance, it would be very enlightening to provide a more systematic discussion of the weights and priorities of the values that are traded off against the principles of justice. Is pluralism just a synonym for intuitionism? What is the connection between a principle of justice and principles of regulation? Does 'applied theory' mean 'bottom-up', 'fact-sensitive'? What kinds of concessions to feasibility are justified in order to have practical value for public policy? (Wolff 2011, 1-10). Segall describes the "the structure of justice" as the process of arriving at convincing principles of regulation out of a balancing of principles of justice against a plurality of competing values and considerations. By "the substance of justice" he understands the kind of support that the pure ideal theory of luck egalitarianism derives from its applied branch. The more convincing luck egalitarian solutions are to practical cases, the more appealing the pure ideal theory (172-173). I find the connection between the structure and the substance of justice problematic. In my reading of *Health, Luck and Justice* I will explore and discuss the extent to which this challenge is met.

III. An Egalitarian World Health Organization

One problem with the whole project is the lack of differentiation of theoretical levels in the articulation of the chapters. While democratic egalitarians are fundamentally concerned with relationships among members of a political community that shares some basic institutions, luck egalitarians adopt a critical take on the arbitrariness of national

membership and embrace a more cosmic conception of justice. Segall not only questions the moral arbitrariness of the natural lottery that distributes our chances in life in a given society, but also questions the national natural lottery that determines the vast disparity in quality of life globally (6). Considering the magnitude of this strikingly dramatic fact it is difficult to overlook its relevance for a theory of health justice. Segall affirms that he is not addressing the question of the internal connection between luck egalitarianism and cosmopolitanism, although making this point explicit would enhance the fruitfulness of his proposal. He skips this discussion by simply quoting Arneson in an endnote: "Luck egalitarianism in its core, unless encumbered with added moral commitments that do not arise from the internal development of its rationale but are just slapped on from outside, is a global cosmopolitan account of social justice" (215 n. 16). Segall finds Arneson's interpretation more convincing than the more limited view sponsored by Dworkin. But we lack a more detailed discussion of the value of community, or of the relationships of co-responsibility that are being sacrificed. This is one of the great unresolved tensions in Segall's challenge.

The third part of the book is entitled Health without Borders. The chapters in this section describe a status quo scenario of internal borders in federal states and an international order of sovereign states. The analysis points out how arbitrary international inequalities in health are and how irrelevant nationality is as a factor justifying them. At the domestic level, this leads us to oppose the fragmentation and devolution of the Federal Health System in multinational states, because this would foreseeably engender further disparities in health between rich and poor communities. Cultural preferences that develop into expensive preferences in healthcare should also be rejected. Health equity seems to justify a limit to self-determination or limited autonomy at the sub-national level. As a constraint to political determination, health justice also expresses an internal trade-off of goods and values within a general theory of justice. Cultural values that shape the life of a community, for instance, have to be weighted and justified against their impact on the partial account of health justice. National borders, as a departure from the global cosmopolitan account of social justice sponsored by Arneson, should be justified as "moral commitments slapped on from the outside." We lack an explicit ranking of preferences that would enable the tradeoffs that would justify an international political order and so Segall does not fully fulfil the challenge of offering a partial conception of justice in health that would illuminate a general theory of luck egalitarian justice. We know that equity in health is a political constraint relevant enough to block internal political fragmentation and sub-national self-determination. However, we do not find an analogous argument against the international political structure.

At the sub-national level, Segall provides all sorts of empirical considerations that undermine the practical feasibility of equity in health in a fragmented healthcare system, including self-centred bias and local loyalties. All things considered, preserving the good of equity in health is defended as a valid argument to block sub-national levels of self-government. Why then should supra-national levels be permitted when they lead to a massive and dramatic violation of equity in health? This is the question that Segall never

addresses explicitly when discussing the issue of global health. Despite advocating an egalitarian global distribution of the social determinants of health, Segall admits the same political structure of fragmented self-governing units that he condemned as inimical to the preservation of that highly significant component of social justice that is health equity. This relatively unquestioned starting point is at odds with both embracing the cosmic character of luck egalitarianism and with the Arnesonian defence of a cosmopolitan conception of global social justice. It also clashes with the practical challenge of offering policy guidelines for a WHO capable of implementing a global prioritarian distribution of the social determinants of health. We need more light to distinguish what are:

i. The trade-offs between a substantive but *partial* theory of health justice that has to be balanced against other legitimate considerations within a general theory of justice and "other moral commitments slapped on from outside."
ii. The trade-offs between an ideal conception of justice and *non-ideal* theory applied to conditions of gender-based inequalities in life expectancies, self-centred preferences, biased political systems and particularistic solidarities.

These distinctions are much needed, because without them the luck egalitarian project risks losing its cosmopolitan edge. The luck egalitarian contribution to the debate about social justice had consisted in pushing the Rawlsian notion of natural lottery towards its more radical consequences, questioning dubious notions of entitlement deeply embedded in obscure figures of meritocratic reward or exclusionary borders. However, luck egalitarianism had always faced two difficult questions in the strict implications of a concept of responsibility in (i) the development of expensive tastes and in (ii) the abandonment of the reckless to the consequences of their informed decisions.[1]

Although in general Segall admits that luck egalitarianism is a natural advocate of multicultural accommodations, since individuals have no control over the culture in which they are rooted and socialized, he warns against the development of culturally based expensive healthcare preferences when they can be used as arguments to fragment a unitary healthcare system according to the preferences of groups with different purchasing powers (143-144).

Segall examines the second difficulty by first tuning down the concept of responsibility to what is "reasonable to expect individuals to avoid," which is very similar to – but simpler than – Roemer's account of standards for expected performance within homogeneous social types (Roemer 1998, 16-18). When we apply this luck egalitarian conception of health justice to the international status quo, the assessment is critically negative. Huge international disparities in health cannot be justified because:

i. A substantial percentage of the populations in the very worst conditions are children who cannot be held responsible for the political decisions of their countries or for the decisions taken by older generations on their behalf (Gosseries 2012, 293-294).

ii. A significant portion of the people having the worst health status live under regimes that are not sufficiently representative to hold them responsible for the political decisions taken by their leaders.
iii. Even in a hypothetical democratic republic of Imprudentia, dissenters who do not benefit from reckless policies cannot be held responsible for the adverse consequences for their health.
iv. Segall also rejects Daniels' claim that international poor performance in health policy can be almost totally explained by domestic causes. On the contrary, Segall affirms that an unjust international system plays a significant role in perpetuating global inequalities in resources and also in health. Those poor countries with an exceptionally high record in health are egalitarian countries with a huge investment in the public sector that have to resist enormous political and economic pressures. These are not exemplars of the irrelevant role of the global order. These countries exemplify "what it is unreasonable to expect." Consequently, the threshold of responsibility for poor performance in health should lower its bar. The global order has a negative impact on global health and the correlation between GDP and the Global Disease Burden is stronger than Daniels admits. The magnitude of what should be redistributed in terms of *justice* to compensate global inequalities in health is larger than what Daniels concedes (Daniels 2008, 344).
v. After taking into account the role of global institutions in poor domestic performance in health, the room for full responsibility in Imprudentia is substantially reduced. However, even in these cases, Segall avoids abandoning the reckless by combining luck egalitarianism with a duty of humanitarian assistance under a morally pluralistic umbrella. The threshold of this duty of compassion is the attendance of medical needs.

At the end, the pluralistic-egalitarian version of justice in health defends an almost unconditional equality in health, qualified with a formal accommodation of a sense of respect for agency and responsibility that in practice is dissolved in the complex circumstances of the attribution of responsibility beyond the "reasonable avoidance" condition. Even if Reckless and Prudent compete for scarce resources, urgency of need decides. In case of equal urgency, Segall recommends tossing a loaded coin to avoid uncompassionate automatic abandonment. In short: other things being equal, responsibility *might* make a difference. The larger the scale, the smaller the difference. In terms of global health, justice requires practical equality.

From these sound arguments it is possible to affirm that international inequalities in health are unjust and should be addressed through the redistribution of the social determinants of health, prioritizing transfers from a Global Health Dividend to the worst-off populations (161-164).

IV. The Facts and Principles of Global Health Governance

Once we assess the international status quo against a luck egalitarian criterion of justice in health, an applied theory should bring us guidelines for political reform. Even under

a 'cosmic' conception of justice, we can only assess an institutional order or some social circumstance when it can be traced back to an intentional act and when there were foreseeable and preferable alternatives at hand. It only makes sense to condemn international inequality in health if it is possible to design an alternative system that improves the situation. Quoting Cohen: "How much deviation from principle P is justified for the sake of better compliance with principle Q, across different types of circumstances, is an *a priori* matter, not one sensitive to fact. But how much we actually implement P and Q depends on the factual question: what circumstances are we actually in?" (2008, 272). Although Segall has identified the putative spider behind the web of causation in the social production of disease (Krieger 1994) he does not recommend an alternative political architecture. The Global Health Dividend that Segall briefly sketches is outside the 'feasibility set' dotted by the same factual points that advise against devolution and local self-government in healthcare.

If the point of developing a luck egalitarian theory of health justice is that health is such a determining factor in equal opportunity to wellbeing (or access to advantages) that we cannot understand social justice properly without a comprehensive account of the impact of health justice, then we must assume that the institutions governing the social determinants of health must have political relevance in designing the social structure. This argument is also consistent with Segall's case for resisting political devolution and for taming the proliferation of collective health-tastes and cultural preferences in healthcare. But if we have convincing arguments to oppose sub-national devolution, we also have analogous arguments to reject a political division of labour that systematically produces unjust inequalities in global health. The international system cannot be taken for granted in a luck egalitarian perspective. It stands in need of justification from a neutral starting point (Holtug 2011, 150), and if borders are in need of justification, then the default position is a global scenario from which we have to evaluate justifiable departures, that is, permissible degrees of sub-global political devolution.

On the contrary, Segall's approach starts midway. Assuming the national state as the natural ground, he examines our duties towards co-citizens in complex multinational states (sub-national level) and duties towards foreigners (beyond national). But in order to implement these duties it is necessary to address the political design of the very global political structure that perpetuates such a vast inequity in health.

Segall tries to minimize the extent of the transfers required, admitting that beyond a threshold of $6-8,000 GDP per capita increments in wealth have a very limited impact in population health (159; Daniels 2008, 84; 342). Consequently we should point to this goal to mitigate the inequalities in health. However, the magnitudes correlated in Daniel's figure are wealth (GDP per capita) and life expectancy at birth. Even if we have to rely for practical purposes on the indicators at hand, we should keep in mind that in these conversions we cannot devaluate the currency of justice in the absence of an explicit and convincing reason. In this case, although in several passages the author reminds us of the difference between life and the quality of healthy life (that implies the full enjoyment of normal functionings), we do not have any

guarantee that life expectancy at this GDP threshold can count as egalitarian health measured in QALYs/DALYs. There are multiple health deficits with a severe impact on wellbeing and on the development of important capacities that are compatible with an average life-expectancy. Translating global health equity into the correlation of $6-8,000 GDP per capita/life expectancy implies reducing a global egalitarian ideal to a sufficientarian proxy. This is a trade-off that must be justified with convincing reasons, because although we would be massively improving the situation of many, we would be depriving all of them of a quality of healthy life that they deserve in equal terms.

We should also keep in mind that the original undevalued currency implies the distribution of the social determinants of health that go beyond the usual access to medical care or the non-clinical public health policy. These include, as described by the author, "the effects of familial nurture in early life, social exclusion, unemployment, work (not work safety, but rather the effects of stress and workplace hierarchy), the availability of social networks, substance addiction, diet (again: quality, as distinct from safety, of food), and transport" (91-92). Achieving these conditions may require:

i. Imposing a larger than expected contribution to a redistributive mechanism that would demand unpopular sacrifices from the rich countries. The potential political resistance to these transfers might also be greater than expected.
ii. Implementing a global executive agency capable of collecting the funds, enforcing local policies related to the social determinants of health, and monitoring performance.
iii. If these goals seem unrealistic then the author should articulate an explicit justification of why a voluntary commitment to a sufficientarian $6-8,000 GDP per capita threshold is a good enough second best.

Alternative approaches to this Global Health Dividend also face similar problems. Daniels' Fair Equality of Opportunity approach relies mostly on a statist structure, where the duty of securing the human right to health rests primarily on states and only secondarily on the international community. However, Daniels points to the emerging horizon of international organizations as a possible arena to develop an intermediate morality of cooperation that can provide public goods for global health and a more efficient level of coordination (2008, 345-55).

Among the most promising global institutional reforms that Daniels highlights we can find Pogge's Health Impact Fund (HIF). This project is substantively different from Segall's Global Health Dividend because it takes into account the fact of self-centred incentives and minimizes its reliance on morally motivated international conduct. The HIF is a global scheme for access to essential medicines (healthcare) that rewards innovators (Big Pharma) according to its measurable impact on the quality of life of the human population. Its motivation is egalitarian, but in practice its internal regulation works in a prioritarian way because the worst living conditions imply the most rewarding potential.

The currency of the HIF is the QALYs that are accounted against the Global Disease Burden. (Daniels 2008, 352-53; Pogge 2009; 2011)

Madison Powers and Ruth Faden defend a very nuanced and sophisticated account of sufficiency for wellbeing. This eclectic account is explicity Sufficientarian, although some key dimensions of wellbeing (respect) may require an egalitarian distribution to be effective. However, their contextual account is strongly non-idealistic and they reject the idea that a decent life span should be measured using highest life-expectancy as the benchmark (Japan), as the Global Disease Burden project of the WHO does (Powers and Faden 2006, 61; 95). In contrast to Daniels, Powers and Faden consider Thomas Pogge's account of the role of the global order in the perpetuation of severe poverty and its impact on global health inequality to be compelling. Consequently, they are completely aware that meeting the basic needs of the populations living in most parts of the developing world "involve much more than what global public health institutions, both public and private, can provide" (2006, 85, 90-91).

Other capability theorists, such as Sridar Venkatapuram, offer sufficientarian accounts, describing health as a meta-capability that includes certain core social entitlements to achieve a determined level of functionings. This level is referenced to the possibilities and technological advances of a given time. This theory of the capability for health combines the perspective of the social determinants of health with the individualistic method of the capability approach. It places an emphasis on the existence of local conditions that can ensure a sustainably healthy life span and on the awareness of the global nature of many of these factors that can affect and threaten population health. Surprisingly for a work about *Health Justice* and with a whole (final) chapter devoted to global justice, there is no mention of the impact of global poverty on poor health in terms of justice. At the same time it stresses that all agents, public and private, collective and singular, have a moral duty to contribute to make all individuals meet the threshold of capabilities for health, which is a core notion less demanding than the concept of wellbeing that is linked to the whole list of capabilities: "to be healthy is to have a sufficient level of capabilities of pursuing life plans in contemporary global society that is commensurate with equal human dignity" (Venkatapuram 2011, 168; 225; 152; 230-31).

Jennifer Prah Ruger adopts a more limited version of the capabilities approach, focusing on in the more traditional domain of public health while expressing some sceptical doubts regarding the wisdom of acting through poorly understood causal correlations to achieve indirect effects on individual health (2010, 98-103). She progressively expands the original view to global health justice in a conception in which "justice requires prioritizing responsibilities through shared health governance to reduce shortfall inequalities in central health capabilities – a general duty to reduce premature mortality and escapable morbidity" (2009, 261). The criterion of shortfall equality consists in a hybrid between a sufficientarian threshold and a prioritarian commitment to reduce the gap below the norm or maximize the potential above without reducing anyone's functioning below the norm. Ruger realizes that the

promotion of this goal requires an enabling institutional framework and she proposes the conception of "Provincial Globalism" as a workable way to achieve the degree of coordinated allocation of responsibilities among all the capable powers to create shared health governance (2009, 273-74). The final stages of these voluntary agreements and ethical commitments should lead to the creation of a global "Health Constitution" that works as meta-reference for prescribing the sort of instruments that would guarantee the realization of the common goal (2011, 42-43).

Finally, the "Framework Convention on Global Health" constitutes one last attempt to put the emphasis on the need of global structural reform to have any realistic chance of a progressive realization of global health. Drafted by Lawrence Gostin, this proposal sets a very low bar: meeting the survival needs of the world's less healthy people. It articulates a complex layered structure that relies on international law and that exploits the underused normative capacity of the WHO (Gostin 2008).[2] However, in view of the enduring political difficulties related to establishing binding agreements for resource transfers, Gostin has advanced a lighter and even less demanding coordinating mechanism based on voluntary agreements around a "Global Plan for Justice" to redress the health gap (Gostin 2010).

V. Conclusion

I have pointed to the problematic transition between international political structures and conceptions of global health justice to rescue one of the key questions a luck egalitarian theory of health justice has to address. If health equity is such a transcendental constitutive of social justice to block political devolution and sub-national levels of self-government, why should we rely on a international political structure that systematically produces massive inequities in health, and on the mandate of an inefficient WHO? Should a luck egalitarian conception of global health not also illuminate our understanding of the permissible political structures and of the legitimate constraints on their sovereign power? Is health not truly without borders?

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NOTES

1. See for instance the accompanying articles in this Reactions and Debate section.

2. On the pragmatic advantages of supplementing philosophical arguments with case law and the human rights regime, see also Jonathan Wolff, "The Human Right to Health," in *Global Health and Global Health Ethics*, edited by Solomon Benatar and Gillian Brock (Cambridge: Cambridge University Press, 2011), 108-118.

Segall on Sufficiency: Opting Out and Historical Responsibility

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I. INTRODUCTION

Health, Luck, and Justice is a great book. Its strengths lie in the sharpness and clarity of its argumentation together with the fact of delving into a domain of justice that was in dire need of systematic exploration. I am in agreement with the main lines of Segall's position: the prioritarian pattern of his egalitarianism, the need for a 'reasonable avoidability'

-like ingredient in the currency of justice, the fact of combining it with a responsibility-insensitive basic needs sufficientarianism, its cosmopolitan scope, etc.

Unsurprisingly, there are also some points on which I do not fully share Segall's views. For example, while I agree with several of his arguments against "all-luck egalitarianism", it does not seem to me that, under a prioritarian form, it is subject to levelling down (52-53). I am also not convinced by the way in which he rejects what he calls the "cosmic affirmative action" view when it comes to dealing with differences in life expectancy between the sexes (107-108). Moreover, I would personally not be happy to give as much weight to aggregative considerations as he does, beyond cases in which efficiency gains are likely to benefit the least well-off (118). In this critical note, however, I would like to limit myself to three aspects of his book.

II. Equality-Sufficiency Discontinuity?

In the first part of his book, Segall defends a view that combines a (responsibility-sensitive) luck egalitarianism with a (responsibility-insensitive) basic needs sufficientarian requirement. This allows him to address what he calls the "abandonment objection". As he puts it, his account of healthcare "supplements luck egalitarian distributive justice with a layer of sufficientarian concern for meeting everybody's basic needs regardless of their antecedent health-related conduct" (74).

I agree with the desirability of such a combination. However, I would like to briefly discuss the way in which Segall analyzes the nature of this combination. He insists on a discontinuity between the two parts of his combined view:

> […] I shall attempt to provide some reasons for thinking that luck egalitarians can meet the abandonment objection, and justify treatment for imprudent patients […]. But before doing so I need to say something about the permissibility of employing such *non-egalitarian considerations* […] (64, italics mine).

> I have argued here that the imprudent (e.g. reckless drivers) should not be left to die, *but not because of considerations of distributive justice*, the only kind of considerations that could potentially undermine luck egalitarianism (73, italics mine).

It thus looks as if the sufficientarian component is neither egalitarian, nor even part of distributive justice. While insisting on the discontinuity between the two components, Segall defends the combination through reference to value pluralism. Whether a case could be made in favour of single-principle views as opposed to more complex ones is unclear. In other words, whether there are good reasons to believe that a more continuous theory is likely to provide a better account of fairness is open to discussion. Admittedly, coherentists might sometimes feel that a more elegant, less complex normative theory is also more likely to meet a high standard of coherence. But at the same time, this does not seem to suffice for many of us to privilege a single-principled classical utilitarian, for example, over a more complex Rawlsian view.

Be that as it may, let me check here whether Segall's view is actually not more continuous than what he is willing to admit, both at the pattern and at the currency levels. Let me begin with the *pattern* dimension. Segall claims that sufficientarianism is a *non-egalitarian* idea. It is unclear to what extent he construes the term 'egalitarian' narrowly in the quote above. If one picks *prioritarian* egalitarianism (of which leximin egalitarianism is a version), sufficientarianism could generally be presented as a responsibility-insensitive form of capped prioritarianism. Instead of giving priority to improving the situation of the least well-off in a *maximizing* way, we would do so in a *satisficing* manner, i.e. up to a certain level. The spirit of this sufficientarianism (or *satismin* egalitarianism) seems to me quite continuous with the spirit of prioritarianism (or leximin), despite the fact that they use different strategies to limit the extent of redistribution (capping *versus* responsibility-sensitivity). Later in the book (117), Segall himself explicitly considers two branches of prioritarianism, which he refers to as the sufficientarian and the egalitarian.

Moreover, even a 'classical' egalitarian pattern – focusing on inequalities as such rather than on improving the situation of the least well-off as in the prioritarian case – could be continuous with sufficientarianism if we agree to see the latter as a limitation of the scope of egalitarian demands. This possibility is in fact accepted by Segall himself when he states that under the democratic equality account – defended by Elizabeth Anderson, for example – "the point of *egalitarian justice* is to provide everyone with a *sufficient level* of functioning. More specifically, justice requires an equal distribution of only those goods and capabilities that are needed for the sake of equal citizenship and equal access to civil society" (37, italics mine).

Rather than being discontinuous in terms of pattern, one could actually conclude at this stage that Segall's view combines a *single* pattern with *two* currencies, each applying to its own specific domain, i.e. below and above the threshold. Moreover, if egalitarianism can be said to be a *distributive* view, it would make sense to characterize sufficientarianism in the same way, contrary to what is implied above in Segall's second quote.

There thus seems to be more continuity than Segall is willing to admit at the *pattern* level. Could we not move one step further and argue that even at the *currency* level, continuity is stronger than Segall suggests? He discusses three versions of sufficientarianism in succession:

i. *Democratic equality*, criticized in chapter 2(3).
ii. Basic needs sufficientarianism, endorsed in chapter 4(4).
iii. Autonomy-focused sufficientarianism, rejected in chapter 4(1) because "this autonomy response turns out to be a *nonegalitarian* response" (63, italics mine).

I would like to focus on the latter form of sufficientarianism and check whether it could be seen as continuous with luck prioritarianism, if only in part. I agree with Segall on his starting point, i.e. the claim regarding the material basis for voluntariness/autonomy. Here is the "material basis for autonomy" assumption (hereinafter "MB") as he puts it:

> […] once victims of bad option luck are allowed to slip below the material prerequisites of autonomy, their subsequent choices and actions invariably fall under the brute luck category, as the agents cannot be held responsible for the resulting disadvantages (63).

According to Segall, autonomy sufficientarianism claims that "it is imperative that those who suffer bad option luck do not fall below the subsistence level required for autonomous conduct" (63). Segall adds however that "it is *not a requirement of luck egalitarian justice* that victims of option luck be raised to the level of autonomy. For it is not unfair to abandon them, according to this reading; it is only inefficient" (63, italics mine). Is he right?

Consider people finding themselves below the sufficiency threshold due to brute bad luck. They act in a certain way 'x' and the question is: should we compensate all the disadvantages resulting from their engagement in 'x'. If we accept MB, the answer is 'yes' because – as was pointed out above – none of them can be regarded as the result of a choice. And this is so even for a luck prioritarian who does not add a sufficientarian *complement* to his or her view. It does not follow from the view that the theory would become responsibility-insensitive once we find ourselves below the threshold. It simply results from the factual MB assumption. The autonomy/voluntariness condition for responsibility is never met, as a matter of fact, for agents finding themselves below the threshold.

If we were to stop here, it would look as if the metrics of a responsibility-insensitive sufficientarianism and that of luck egalitarianism *converge* through the MB assumption. It would seem therefore that continuity is strong at the *currency* level too. This requires, of course, that the sufficiency threshold be understood as 'sufficient for autonomy' as opposed to 'sufficient for basic needs' or 'sufficient for democratic participation'. Or at the very least that there be a convergence between the 'sufficient for autonomy' threshold and the others.

However, there are two peculiarities with 'autonomy sufficientarianism'. First, if the people finding themselves below the threshold do not seize an opportunity that could bring them back *above* the sufficiency level (e.g. take a very cheap medicine that requires some form of lucidity for its administration), we could consider – as luck prioritarians – that this is to be assimilated with brute bad luck. We will therefore compensate for this. Such a compensation may actually bring us well above the sufficiency threshold if taking the medicine would have done so too. This is one way in which autonomy sufficientarianism would behave differently from a form of luck prioritarianism endorsing the MB assumption. The former would stop at the sufficiency level whereas the latter would not.

Second – and more importantly – how are we to address a case in which a person starts at a position well above sufficiency and then falls below it out of reasonably avoidable behaviour such as reckless driving? Call this the 'recklessly slipping below' case, following Segall's quote above. Luck egalitarians accepting the MB assumption will *not* require compensation for inequalities resulting from this reckless driving action, even though they will call for compensation for inequalities resulting from *subsequent* actions taking place from below the threshold. If the situation of finding oneself below

sufficiency can be traced back to this initial act of slipping from above sufficiency, in principle, luck egalitarians accepting MB might remain unable to bring the person back to sufficiency, although they will definitely compensate any further inequality that may arise. It is probably this specific 'recklessly slipping below' case that Segall has in mind when he writes that "it is not a requirement of luck egalitarian justice that victims of *option luck* be raised to the level of autonomy" (63, italics mine). The case shows that an autonomy sufficientarian view can do more than what a luck egalitarian view endorsing MB is able to justify.

What should we conclude? At the *pattern* level, there is more continuity than Segall is willing to admit. At the *currency* level, things are less clear-cut. However, while the 'recklessly slipping below' case points at a clear difference between a luck prioritarian accepting MB and an autonomy sufficientarian, there is still at the very least a *strong convergence* between the two views.

III. What's Wrong with Opting Out?

In chapter 5, Segall defines the contours of his universal healthcare regime, especially insofar as its sufficientarian dimension is concerned. As he puts it, universality involves two dimensions. On the one hand, "a universal system is one that encompasses everyone and excludes no one" (74). On the other, "a system is universal, not only if it excludes no one, but also if it allows no one to opt out of it" (74). In short: neither exclusion, nor self-exclusion. It is the latter dimension that I will look into here.

Opting out in healthcare is an important issue. A healthcare system may deny patients the freedom to seek medical services in the private sector, even if they prefer to spend their own pocket money on extra medical care rather than on attending hockey matches. And in the case of organ donation schemes put in place in many countries, there is the issue as to whether the default legal position should be that people allow their organs to be donated at their death unless they opt out. Here, Segall looks into two opting out cases that still differ from the two previous ones. Let me stylize them as follows:

The consistent reckless (chapter 5[1])

What if a reckless person would prefer to forego medical treatment in a case of bad option luck rather than having to pay for it?

Roger the violinist (chapter 5[4])

What if Roger would prefer to forego medical treatment to restore his ability to walk in exchange for cash to buy himself a Stradivarius?

Segall seeks to justify why both individuals should not be allowed to go for their preferred option. What differentiates/connects the two cases is not entirely clear to me. However, let me consider each of them in turn.

To the 'consistent reckless' willing to pay the (uncertain and future) price of not incurring the (well-defined and present) costs of contributing to the healthcare system, Segall objects that "no one may sign away a priori the entitlement to have one's basic needs met" (78). The question is of course 'why?' My suspicion is that it is hard to avoid justifying that either in mildly paternalistic terms – see, for example, Van Parijs (1995) on the regular instalments *versus* lump sum debate –, or perhaps through a requirement of solidarity – central to luck egalitarianism –, whenever there are good reasons to believe that the reckless person is likely to end up being a net beneficiary and is otherwise better-off for brute luck reasons. The justification that Segall invokes differs from this. I think that it is a problematic one. He claims:

> It is because we have a duty to meet basic needs, not because people have a right to have their basic needs met, that one may not waive one's entitlement to medical care (78).

If one agrees to consider that duties are there to serve rights – an admittedly controversial claim – it is hard to see why the inalienability *of the duty* should *ground* the unwaivability *of the right*, rather than the reverse. If so, one needs an argument for the unwaivability of the right in the first place. One may of course have pragmatic arguments such as "we know very well that such people are short-sighted and say now that they won't ask for anything, but will still come to us later and ask for it and even though we will not be morally obliged, we will not refuse to help them". But I do not think that if we renounce one of the two justificatory lines above (mild paternalism and/or solidarity), the view can be more principled than that. Phrased in that way, it is problematic because saying "we will not refuse to help them" does not mean "we will have a moral duty to help them".[1]

Consider then the violinist. The argument offered by Segall against allowing Roger to get the cash instead of healthcare for his leg is the following:

> [W]elfarist luck egalitarians are committed to restoring Roger's equal opportunity for welfare compared to others; not to restoring his level of welfare to that of others. Thus, they recommend providing him with the means that would restore that opportunity (namely, the wheelchair), and not providing him with whatever means would boost his welfare (86).

To be clear, consider Roger's possible claims:

i. "I prefer a wheelchair to a leg, at no extra (long-term) cost to society"
ii. "I prefer a violin to a wheelchair or a leg, at no extra (long-term) cost to society"

Should we grant Roger what he wants? I would conjecture that Segall would say 'yes' in the first case and 'no' in the second. I tend to think that if Roger's request were to be rejected, it should either be for pragmatic reasons (moral hazard) or on grounds of a minimally thick conception of the good life ('legs matter more than enhanced arms'). Let me add here that referring to a Stradivarius may suggest that the reason for denying Roger his violin has to do with the fact that the latter is more expensive than a wheelchair. The use by Segall of the word 'expensive' in conversation preserves an ambiguity in this respect. However, I do not think that this is what is at the heart of Segall's argument. So, let us assume that the violin costs the same as the leg replacement or the wheelchair.

I have three specific worries about Segall's quote above where he claims that a focus on the proper currency of prioritarianism should make the answer clear. First, while Segall rightly rejects the specific way in which Daniels characterizes the specialness of *health* (chapter 2[1]),[2] and while he also rejects the view according to which *healthcare* would be special with respect to health (chapter 6[2]), one would have hoped to see more of an account of whether Segall believes that *health* matters more than other dimensions in life (see, however, 95-96). His position on Roger the violinist could actually be read as implying that. But it is not argued for on such grounds.

Second, instead of phrasing the issue as an 'opportunity for welfare *versus* welfare', one could rather phrase it as a 'type 1 opportunity for welfare' *versus* a 'type 2 opportunity for welfare'. Type 1 would be 'leg-or-wheelchair-based' while type 2 would be 'violin-based'. Third, the worry about Segall's answer to the violinist's request becomes even stronger as we consider his emphasis in chapter 6 on the fact that while "health underlies much of our welfare" (95), "healthcare is a relatively minor determinant of our health" (96). If one accepts that playing the violin may literally contribute to the Roger's *health* more than having his legs fixed, it becomes less clear why one should not grant him what he wants. It is also unclear to what extent we can say that a wheelchair or a leg prosthesis contributes to someone's health in the same sense as a new leg. And one could even ask why one should deny someone the choice between a wheelchair and, for example, a water sanitation machine that would clearly contribute to his or her *health* too, *ex hypothesi* at the same cost to society. In short, a violin may be as much a matter of *opportunity* for welfare as a wheelchair. And a violin could contribute to Roger's *health* at least as much as a wheelchair.

Since we are talking about legs, let me introduce a slight variation on Segall's example to press him on the idea of putting priority on 'fixing root causes'. As soon as we accept the view that providing a wheelchair can be seen as a proper way of fixing the root causes, one is *prima facie* bound to accept an equally (in)expensive musical instrument as a substitute if the patient prefers so. Imagine that Roger is a heavy metal drummer and that he hates walking and hiking. For him, his legs are mostly useful to press the drum pedals, not to walk. If he loses a leg, this will reduce his opportunity for welfare significantly, not because he will have more difficulties to walk, but mainly because it will be more difficult for him to play music. Imagine that a substitute to the drum pedal costs the same price as the wheelchair. I don't see any other reason than paternalism or moral hazard to deny Roger this drumming substitute. So, what this points at is that, in Segall's treatment,

there is perhaps a certain vision of what each part of the body is standardly meant for – here the locomotion function of a leg rather than the pedal pressing function. A careful assessment of the connection between legs, health, music and opportunity for welfare thus brings serious doubts on Segall's position on Roger the violinist. While in both the 'consistent reckless' and Roger the violinist cases, a prohibition on opting out might be defended, it does not seem that Segall's own grounds for it are sufficient.

IV. A Separate Status for Benefits Resulting from Past Wrongs?

In chapter 11, Segall discusses one important issue in global justice. For the latter is not only about whether the fact of being compatriots or not should make a difference, it is also about how to deal with issues of collective responsibility. It is about whether dissenting minorities within a generation, or generations following a decision-making one, should be held responsible for disadvantages resulting from reasonably avoidable actions in the past. This is a notably tricky question. The approach that Segall adopts here is 'benefit-based':

> [W]e are required to hold citizens of developing nations liable for policies from which they benefit, even if they are not morally responsible for enacting them (157).[3]

He adopts this view both for dissenting minority members and for the descendants of those who took reasonably avoidable decisions. However, his strategy then consists in claiming that *as a matter of fact*, "those bearing the greatest share of the global burden of disease seldom otherwise benefit from the policies that have led to their poor health status" (162). This means that the condition for a benefit-based responsibility is very often *not met*. This is an important step that is too often left aside in actual debates on the matter.

However, beside the fact that the requirements of benefit-based responsibility are not met, I think that there is something wrong not only with holding a person responsible for the actions of others from which he or she did not benefit, but even with compensating the victims of such actions to the extent to which one benefited from these problematic actions by others. What is at stake here is the extent to which one wants to treat such benefits *separately* from the whole package of wealth inherited from the previous generation. In other words, this has to do with the extent to which one should agree to pursue specific justice separately from overall justice, as Segall discusses in chapter 6(2).

My view differs from his in the following way, at least in cases of historical injustice where no issues of incentives are at stake. I think that when looking at cases of historical injustice, we should not consider the current generation as morally responsible for past wrongs. But we should also reject the intermediary view that focuses on the current benefits from past wrongs. Instead, the only thing one needs to do – at least in cases where incentives are not at stake – is to consider the full basket that each of the states has inherited, and treat it fully as a circumstance. From the point of view of a generation, the

acts of the earlier generation are pure circumstances over which they have no control. There is thus no reason to treat these benefits *separately* – and differently in terms of the obligations they would generate – from, for example, the amount of natural wealth one happens to inherit as a random result of the geographical location of one's territory.

To put it differently, whatever causes our level of inherited wealth (natural events, past wrongs, prudent action) is to be considered as pure *brute luck* from the perspective of the inheriting generation. This means that in the intergenerational realm, without abandoning the idea of responsibility, one should simply conclude that *as a matter of fact*, what a generation inherits is a matter of *brute luck*. This reduces of course the *practical* scope for responsibility. But it is what a consistent luck prioritarian view requires, rather than trying to recuperate a derived form of special responsibility through the idea of 'benefit-based' responsibility. The cases involving incentives are of course more complex. But even then, I would claim that the principles to be applied are not as straightforward a 'benefit-based' approach as the one defended by Segall.[4]

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Notes

1. Compare this with Bou-Habib (2006).
2. Segall also claims that Daniels considers *healthcare* as special (93).
3. See also: "It is that personal and communal benefit from past injustices that generates the duty to apologize and compensate" (157); "where dissenters are still likely to benefit from the policy they opposed, moral responsibility and liability may come apart" (165).
4. I wish to thank Martin Marchman Andersen. Ideas discussed in this paper were first presented at U. do Minho (Braga, October 5).

Reasonable Avoidability, Responsibility and Lifestyle Diseases

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I. Introduction

In *Health, Luck and Justice*, Shlomi Segall argues for a luck egalitarian approach to justice in healthcare. As the basis for a just distribution he suggests a principle of *Reasonable Avoid-*

ability, which he takes to imply that we do not have justice-based reasons to treat diseases brought about by imprudent behaviour such as smoking and over-eating. While I seek to investigate how we are to understand this principle of Reasonable Avoidability more precisely, I also object to it. First, I argue that Segall neither succeeds in showing that individuals quite generally are responsible for behaviours such as smoking and over-eating, nor that responsibility is ultimately irrelevant for the principle of Reasonable Avoidability. Second, I object to an argument of Segall's, according to which the size of the healthcare costs related to smoking and obesity is irrelevant for whether society reasonably can expect individuals to avoid smoking and obesity. Finally, I come up with a suggestion for how to modify the principle of Reasonable Avoidability so that it can answer my objections.

In his book, Segall argues that people with risky lifestyles place unnecessary burdens on the healthcare system (1). He therefore suggests a luck egalitarian approach to justice in healthcare based on a principle of Reasonable Avoidability (henceforth: RA):

> It is unjust for individuals to be worse off than others due to outcomes that it would have been unreasonable to expect them to avoid (13).

He maintains that we can reasonably expect individuals to exercise, not to smoke, drink, overeat, and the like, and therefore justice does not require society to bear the costs related to such risky behaviours. In order not to *abandon the imprudent*, however, he suggests a model of *meeting basic needs* to complement the luck egalitarian distribution of healthcare. To compensate society for the latter, alcohol, tobacco, fatty food etc. should be taxed *ex ante* proportionally in order to cover the costs associated with the diseases they bring about (hospital expenses etc.).

In the present response I will investigate and object to Segall's principle of RA as the basis of a just distribution of healthcare. First I briefly outline Segall's use of – and arguments for – RA. Second, I suggest that in order to justify the claim that society does not have *justice-based* reasons to treat diseases stemming from behaviours such as smoking and over-eating, Segall must either show that individuals *quite generally* are responsible for smoking and over-eating, or (and it is possible to read him as implying this) that responsibility is irrelevant for RA. I argue that the latter clashes with our basic (luck egalitarian) intuitions, and that it therefore may be better for Segall to demonstrate the former. Segall further argues that the size of the costs related to a certain behaviour (such as smoking) is irrelevant for our considerations about whether we should count that behaviour as reasonably avoidable. Third, I object to this argument and discuss four potential solutions to it. Finally I suggest a modified principle of RA. The examples I will use relate to cases of smoking, but this is mainly because smoking serves as an excellent clear-cut case. I believe my arguments hold *in principle* for most, if not all, behaviours leading to increased risks of diseases.

II. The *Abandonment Objection* and the Idea of RA

The standard objection to a luck egalitarian approach to justice in healthcare is the *abandonment objection* given by Elisabeth Anderson:

> Consider an uninsured driver who negligently makes an illegal turn that causes an accident with another car. Witnesses call the police, reporting who is at fault; the police transmit this information to emergency medical technicians. When they arrive at the scene and find that the driver at fault is uninsured, they leave him to die by the side of the road (1999, 295).

Segall's response to this objection is based primarily on his value pluralism, which consists of a combination of luck egalitarianism and a model of *meeting basic needs*.[1] The idea is this: since we can reasonably expect individuals not to smoke, for example, justice does not require us to treat lung cancer patients when their disease is due to smoking. But, quite importantly, this does not mean that morality demands that we do not treat such patients, but only that we do not have *justice-based* reasons to do so. There might be other moral reasons to treat them, and according to Segall there is a moral reason to meet individuals' basic needs (64). When we do so, however, it is fair to pass on the costs of such treatments to the imprudent individuals themselves in terms of *ex ante* taxation of tobacco, alcohol, fatty food etc.

In order to avoid the *abandonment objection*, however, it seems we would need not only pass on the costs of such treatments, but also the costs of rather far-reaching medical research programmes into lung cancer, for example, since research in such diseases otherwise would have a very low priority. Why would we give any high priority to research in lung cancer, if 9 out of 10 instances are brought about by smoking and we can reasonably expect individuals not to smoke? A plausible system of *ex ante* taxation would therefore need to include such research costs.

Assuming that this in fact can be done in a plausible manner, and that Segall therefore meets the *abandonment objection*, the crucial question remains: which diseases do we have *justice-based* reasons to treat and fund research into?

Segall suggests more precisely that we should "… replace 'responsibility' with a more plausible understanding of what constitutes a case of brute luck." Thus, he maintains, we should understand 'brute luck' as an "…*outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not to avoid in case of omissions)*." And he stresses that 'expectation' is to be understood as a normative expectation rather than an epistemic one: "We are not inquiring here into what people are *likely* to do, but rather what it is that society can reasonably expect of them" (20; italics original).

But which principle, then, should guide us in deciding which outcomes of actions it is unreasonable to expect individuals to avoid? Unfortunately, Segall is not very informative here, though he provides us with a number of examples of what *is* reasonably avoidable:

> People residing in certain parts of California are (often) responsible for choosing to live on a geographical fault line. However, it would be unreasonable to expect them not to settle in these areas owing to the slight chance of being hit by an earthquake (20).

This, Segall continues, is in contrast to smoking:

> A geographical choice of residence is different from the decision to smoke, for example (as the latter does involve what most people would consider a legitimate trade-off between prudence and pleasure) (21).

So according to Segall individuals are responsible for where they reside and for their choice of smoking. But RA would, *ceteris paribus*, require that we compensate individuals in the case of an earthquake, but not in the case of smoking-induced lung cancer. Why this is so seems to be a bit unclear. It seems to me that if RA were to replace responsibility as the basis for our account of luck in a principle of just healthcare distribution, then we would need to know more about it in order to justify (for instance) this distinction between smoking and earthquake risks. So what is it reasonable to expect individuals to avoid? An initial suggestion might regard what is in the individuals' best interest (Vallentyne 2002, 533), but this can hardly be Segall's intention, since his principle of RA has a non-paternalistic motivation:

> In that sense imposing the costs of treatment on the imprudent is not a paternalistic policy. Rather, according to my proposal those costs are passed on to the imprudent not because they have failed to take good care of themselves as such, but rather because they have avoidably burdened the public healthcare system (78).

I will come back to the question of how to read RA. First I will seek to clarify how RA relates to responsibility.

III. Does RA Require Responsibility?

A main point in replacing responsibility with RA seems to be this: there are several cases in which we intuitively find it unreasonable to expect an individual, A, to avoid something, X, *even though* A *prima facie* seems to be responsible for X. To take some of Segall's examples: It is unreasonable to expect A not to reside in certain parts of California *even though* A is responsible for residing there. Or *even though* fire-fighters are responsible for incurring burns, it would be unreasonable to expect them to avoid them (22). I believe there are many such cases, but they are premised on the assumption that individuals *in fact* are responsible for where they reside or for becoming fire-fighters. Similarly, when Segall maintains that it is reasonable to expect individuals to avoid smoking, overeating, inactivity etc., it seems to be based on the assumption that individuals *in fact* are responsible for such activities and omissions. But is this really so? And does it matter for RA?

Again, Segall states that RA is based on a normative societal expectation, and when doing so he refers to Ripstein's article entitled "Equality, Luck, and Responsibility" (20, n. 25). In this article Ripstein states:

> In purely naturalistic terms, there is no obvious place to stop in tracing back the causes of behavior (1994, 5).

This point seems to be broadly accepted (among contemporary philosophers), since *agent-causality*, which is the idea that individuals can somehow start new causal chains that are not pre-determined, has been shown *not* to be plausible. Any attempt to justify responsibility on a premise of *free will*, where *free will* means that individuals are free to determine their own will (not whether they are free to do what they want), seems therefore based on a false premise.[2] In this sense, whatever we do is due to reasons beyond our control.

While Ripstein accepts this, he states:

> The appropriate response […] is not to give an anti-naturalistic metaphysical account of responsibility, nor to naturalize the notion. It is rather to change the subject, and make responsibility a question that is – to borrow a phrase from Rawls – political, not metaphysical (1994, 10).

A crucial question is therefore whether Segall hereby suggests that responsibility is irrelevant for RA? Recall that he suggests a replacement of responsibility with RA. But does this mean that we should avoid the concept of responsibility? Or merely that responsibility is one condition for a just basis of distribution, but that more conditions are required? Again, there seems to be a potential gain in replacing responsibility with RA, when it comes to the following type of sentence, which we can call sentence-type A:

> A. It is unreasonable to expect A to avoid X, *even though* A is responsible for X.

The opposite, however, seems less appealing. We can call it sentence-type B:

> B. It is reasonable to expect A to avoid X, *even though* A is *not* responsible for X.

If Segall means to suggest that responsibility is irrelevant for RA, then RA implicitly allows for sentence-type B. It may be that he (and Ripstein) would prefer something like a sentence-type C:

> C. It is reasonable to expect A to avoid X, if X is conventionally accepted to be reasonably avoidable (20, n. 25).

But such a formulation does not escape the logical conclusion: If C does not premise that responsibility is a necessary condition, then it necessarily allows for sentence-type B.

Now, imagine the following (by reframing a Frankfurt-case; 1969, 66):

> Jones is a smoker who considers quitting rather often. Black, however, who is an excellent brain surgeon, wants Jones to continue smoking. Therefore, without Jones' knowledge, Black implants a mechanism in Jones' brain so that he can supervise and intervene in his brain-processes. The next day Jones in fact decides to quit smoking,

> but shortly after Black activates the mechanism in Jones' brain, so that Jones decides to undo his decision and hence lights up another cigarette.

Here it seems obvious that Jones is *not* responsible for smoking. But can we reasonably expect him not to smoke? I think this expectation clashes with our basic (luck egalitarian) intuitions. It simply seems counter intuitive to allow for sentence-type B when looking for the basis of a just distribution. There may be particular cases where we would allow for sentence-type B, but they would require particularly good other reasons. I will come back to this in the conclusion.

However, if RA, on the other hand, does require responsibility, and sentence-type B is therefore not an issue, then Segall needs to point out in virtue of *what* individuals are responsible for smoking, over-eating, inactivity etc. There are several concepts of responsibility claiming to be compatible with the non-existence of free will. One way to go is to follow Frankfurt, which seems very prominent in contemporary political philosophy,[3] and suggest that what matters for responsibility is whether a person's acts are consistent with what he or she really wants (or who he or she really is; Frankfurt 1971, 68). If such an approach is plausible, then it is important to note that it hardly follows that individuals *in general* are responsible for smoking, physical inactivity and over-eating. Rather, it seems, such behaviours are often characterized by something the individual – at least to some extent – aims to suppress. In fact, an American study shows that 79% of those who smoke would like to give it up (Gallup 2002). Thus, in Dworkin's terms, the taste for smoking is one with which smokers do not in general identify, and to that extent it is comparable to a handicap.

It seems that Segall must either demonstrate that responsibility is irrelevant for RA, or argue for some concept of responsibility in virtue of which individuals *quite generally* are responsible for behaviours leading to increased risks of diseases.

IV. If Responsibility, then Responsibility for What?

Now suppose, *ex hypothesi*, individuals *are* responsible for smoking, over-eating, physical inactivity (etc.) and therefore for their increased risk of disease. Then what follows? What should this responsibility be linked to? Segall's answer to this question is "avoidable burdens on the public healthcare system" (78). But are smokers, over-eaters and the physically inactive really burdening the public healthcare system? And how should we understand the idea of a burden?

In 2008, van Baal *et al.* published a study showing that the ultimo lifetime healthcare costs are higher for 'healthy' people than for smokers and for the obese (2008, 29). The explanation behind this perhaps surprising study is mostly that smokers and the obese die early and therefore avoid many diseases that individuals otherwise get when they grow older. Now suppose these results are true. Would it change the perspective regarding whether we have *justice-based* reasons to treat diseases stemming from these behaviours? In fact Segall considers this objection:

> Suppose, however, that it does turn out that smokers save the healthcare system money, and that those pursuing healthier lifestyles are the ones who burden the system. Would the implications be embarrassing for the luck egalitarian healthcare system? (82)

He rejects this and maintains:

> The justification for passing on the costs of treatment to the imprudent was based on the premise that they *unnecessarily* burden the healthcare system (83).

So we might say that whenever someone enters a hospital with a need for treatment, then the system is burdened. And burdens stemming from behaviours that we reasonably can expect individuals to avoid are *unnecessary* burdens. As such the price is irrelevant. If your need for treatment stems from a behaviour that it would be unreasonable to expect you to avoid, then it is a *necessary* burden. But why is this distinction relevant seen from a societal perspective, if the necessary burdens are more expensive than the unnecessary burdens? Consider the following case:

> Suppose Peter lives in a valley where there are 2 villages, A and B. Peter resides in B and B is smaller than A. Returning from the hill Peter discovers that a dam is about to crack, so a flood is about to come. B is closest to the hill. Just outside of it there is a split in the river with a removable dam. Now Peter faces two relevant options: 1. He can use the dam to lead the flood away from B, and thereby also protect his own house. But the flood will then be directed to A – the larger village – and, Peter has reason to believe, cause more damage. 2. He can use the dam to protect the larger village A by leading the flood into B, but he will thereby also damage his own house. Option 2 will lead to fewer costs for the valley than option 1.

Suppose Peter chooses option 2. Does the valley have a *justice-based* reason to deny him compensation for the damage to his house? Is the damage to his house an *unnecessary* burden? It is indeed hard to see why, and if not, how this case is different from the case of smokers or over-eaters? I can think of four possible answers:

Paternalism

There seems to be a widely accepted definition of paternalism offered by Gerald Dworkin (2010): X acts paternalistically towards Y by doing (omitting) Z, iff:

A Z (or its omission) interferes with the liberty or autonomy of Y.
B X does so without the consent of Y.

C X does so just because Z will improve the welfare of Y (where this includes preventing his welfare from diminishing), or in some way promote the interests, values, or good of Y.

Paternalism may motivate an attempt to justify a relevant difference between the *Peter and the dam*-case above and the case of smoking: holding smokers cost-responsible for smoking may serve as an incentive to quit smoking. However, as Segall includes a premise of non-paternalism in RA this is not an available solution for him. I will come back to this in the conclusion.

The Size of Risk

So how can it be plausible to tax smokers even if smoking generally leads to savings, and for non-paternalistic reasons? Is it somehow unfair to let others pay for particular instances of imprudent behaviour? Is it a matter of the size of the risk rather than the size of the costs and rather than what the risk regards? Does RA regard the very risk of burdening the public healthcare system?

Now recall Segall's claim that it is unreasonable to expect individuals not to settle in certain parts of California owing to the slight chance of being hit by an earthquake. So some 'avoidable' burdens are unreasonable to expect individuals to avoid, and some are not, such as those stemming from smoking. If we assume that the very risk, i.e. the accidence-frequency of burdening the healthcare system due to smoking is higher than due to earthquakes in California, then we may explain why we do not have *justice-based* reasons to treat the former, but only the latter: it is unreasonable to expect individuals to avoid X, if the risk (accidence-frequency) of burdening the healthcare system, due to X, is lower than Y.

Consider the following case:

> Imagine a new product entering the market. Call it Cigrays. It is a kind of a gum – addictive, like smoking – which 20% of the population soon comes to like. After a number of years it turns out that 99% of those who have been enjoying Cigrays simply die when they are in their late sixties. They simply die from what look like very effective heart attacks, and they never make it to the hospital with any needs. The remaining 1%, however, gets terribly sick – likewise in their late sixties – and are thus in need of treatment. The treatment is possible, but so expensive that the net healthcare costs for Cigrays-users are higher than for any other societal groups.

As it transpires, the fact that 99% of those enjoying *Cigrays* simply die, the risk of burdening the healthcare system due to *Cigrays* is lower than Y. Segall would simply have to say that it is unreasonable to expect individuals to avoid *Cigrays* due to the slight chance of burdening the healthcare system. Smoking, on the other hand, the related accidence-

frequency of which we assume to be higher than Y, would still be a reasonably avoidable behaviour, irrelevant to the costs. I do not think this is what Segall means to suggest.

Societal Interest

It has been suggested to me that what we should consider *(un)reasonable* should be done so in light of what society has an interest in promoting. If we take skiing, smoking, giving birth and driving to work to be equally dangerous activities, then society still only has an interest in promoting the latter two. There might be a high health-related risk in the latter two activities, but it is somehow a vital societal interest to promote them.[4]

Now, whereas this may sound promising at a *prima facie* level, I think we are just moving from one ambiguous concept – *reasonable avoidability* – to another – *vital societal interest*. If we accept nonetheless that driving to work and giving birth are somehow activities of vital societal interest, whereas smoking is not, then it still does not seem to follow that we should exclude treatment of smoking-related diseases from the scope of justice.

Smoking may not be a vital societal interest, but this does not imply that it is a vital societal interest that individuals do *not* smoke. Suppose again that smoking is not a net financial burden, and recall Segall's premise of non-paternalism. On which ground can society consider non-smoking a vital interest if it is cost-saving and if it is not for the good of the smokers, i.e. to promote their welfare? In order to answer this, we must ask whether society is more than the sum of individuals? If we hold that it is not, and if smoking leads to cost-savings, then it is difficult to see why society should consider non-smoking as a vital interest. It seems that such an approach falls back on paternalism, since a societal interest in non-smoking most likely can be reduced to the interest of those who actually smoke – assuming, quite plausibly, that it is in the smokers' interest to quit smoking.

I see three possible objections to this conclusion. First, Segall might claim that society is somehow more than the sum of individuals. A discussion of this question is beyond the scope of the present contribution, but in a liberal tradition – a tradition endorsed by Segall himself – it seems to be a very controversial assumption. However, even if society is more than the sum of individuals – that is, if we have moral obligations to society in a way that cannot be reduced to individuals – then it must still be argued why non-smoking is a *vital* interest, why it is decisively important. Second, it might be argued that society has a vital interest in non-smoking, since it has an interest in preventing second-hand smoking. Whereas this is an interesting objection, it is also a contingent objection. Following the trend from most of the western world, we might suggest that smoking should be illegal in public places, or somehow limit smoking to places where non-smokers are sufficiently warned before entering. Furthermore, this objection is not relevant in all cases of imprudent behaviour, such as over-eating and physical inactivity. Third, some might think we should not only worry about second-hand smoking, but also about whether smokers may function as role-models and therefore cause others to start

smoking. But such a worry would be hard to justify, since Segall already seems to assume that smokers are responsible for smoking. This issue, of course, would be irrelevant if RA is insensitive to responsibility, but as I have argued, such an approach seems to have its own problems of justification.

Insofar as smoking is not a financial burden, and insofar as we wish to avoid paternalism, it therefore seems difficult to find justified reasons to consider non-smoking a vital societal interest.

Other Costs

There is, however, one objection that seems more convincing and that may justify the relevant difference between smoking and my case of *Peter and the dam*. It might be suggested that not only healthcare costs should be considered, but also matters such as a loss of productivity.

I am unsure whether it goes beyond what we owe to each other in a liberal society to include non-healthcare costs in deciding this question. But even if we allow for it, I am not sure it would change the conclusion. On the one hand, it seems reasonable to assume that smokers and the obese statistically take more days off sick than do 'healthy' people, which may lead to a loss of productivity. But the consequences of living an unhealthy life often occur late in life, and we therefore, might gain significantly due to a drop in pension expenses (minus the taxes due on the said unpaid pensions).

However, these are contingent and empirical questions, and we can only hope that someone will do the study. Perhaps the most important variable concerns the question of who in the socio-economic hierarchy actually leads unhealthy lives. It might very well be a loss for society if high income groups went from mineral water and fitness to cigarettes and whisky, but we know from studies of social inequality in health that smoking and obesity are more common the lower we go down the socio-economic hierarchy (Lynch *et al.* 2006). Per definition, these are the groups that contribute less, if at all, to the economy, and insofar as their net contribution is negative, then the sooner they die the cheaper – *ceteris paribus*.

V. Redefining RA

In this response I have first argued that in order to justify that society does not have *justice-based* reasons to treat diseases stemming from smoking, over-eating etc., Segall must either show that responsibility is irrelevant for RA, or that individuals *quite generally* are responsible for these behaviours. I have argued that it is counter intuitive to allow for a principle of distribution from which it follows that it can be reasonable to expect A to avoid X, *even though* A is *not* responsible for X. Segall may therefore want to argue for a concept of responsibility from which it follows that individuals *quite generally* are responsible for smoking, over-eating etc. But, as I have also suggested, this might be a difficult challenge.

Second, I have argued that it is hard to see that the total size of the costs related to a certain behaviour, such as smoking, are irrelevant for our consideration of whether we should count that behaviour as reasonably avoidable. Moreover, when RA is premised on non-paternalism, I find it difficult to see how non-smoking can be a vital societal interest – this is under general liberal assumptions and as long as smoking is (net) cost-saving. Here lies an important empirical question in determining the general costs of smoking (and other risky behaviours) as well as an important normative question in determining how to do the calculation, i.e. determining which costs to include.

I endorse Segall's intuition, according to which it can be unreasonable to expect A to avoid X, *even though* A is responsible for X. This intuition gives some reason to believe that responsibility is insufficient as the basis of a just healthcare distribution, and therefore must be replaced with something like RA. For these reasons I suggest a modified (and quite demanding) version of RA: Justice does not require society to bear the costs (healthcare costs or general costs) stemming from a behaviour, X, iff:

i. Individuals *are* responsible for X.
ii. X, generally speaking, leads to higher costs (healthcare or general) than non-X.
iii. We do not have other relevant reasons to find it unreasonable to expect individuals to avoid X (such as our reasons to find it unreasonable to expect women in general not to get pregnant).

It remains to be asked whether Segall could justify his version of RA by giving up his premise of non-paternalism. I do not think so (though I do not otherwise believe we should avoid paternalism). Suppose individuals are not responsible for smoking. This would not mean, for example, that raising the tobacco prices will not result in less tobacco consumption – *ceteris paribus*, which therefore may be a *pro tanto* reason in fact to raise them (Guindon, Tobin and Yach 2002). But not all smokers will quit or smoke less, when the price goes up. If such a paternalistic motive was included in RA, it would follow that we do not have *justice-based* reasons to treat smoking-related diseases, even though smokers are not responsible for smoking.

For similar reasons I believe attempts to allow for sentence-type B ultimately fail. I acknowledge that there might be certain situations when we would appeal to something like *reasonability* without responsibility. But these would be exceptional cases, typically cases of necessary incentive regulation. Consider, as Segall does (22), something like China's one-child policy in relation to increased population. In such an instance we may want to appeal to *reasonability* regarding how many children couples get. Contrary to Segall, however, I believe it would be a conceptual mistake to include such a *reasonability*-appeal in RA. Suppose a woman ends up pregnant without being responsible for it (due to rape, say). If RA allows for sentence-type B, it follows that we do not have *justice-based* reasons to support her bringing the pregnancy to term. Paternalistic policies and other policies of incentive regulation seem, therefore, better kept separated from our luck egalitarian sentiment.[5]

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NOTES

1. For comments on Segall's value pluralism see the other contributors to this edition.
2. See, for example, Hurley 2003, Strawson 1999, or Nagel 1979.
3. Think of Ronald Dworkin 2010.
4. Thanks to Shlomi Segall for this point.
5. For valuable comments, recommendations and discussions related to this article or earlier versions of it I would very much like to thank Dan Wikler, Nir Eyal, Norm Daniels, Alex Gosseries, Xavier Landes, Claus Hansen, Morten Ebbe Juul Nielsen, Kasper Lippert-Rasmussen, Søren Flinch Midtgaard and not least Shlomi Segall and Nils Holtug.

Three Strikes Out: Objections to Shlomi Segall's Luck Egalitarian Justice in Health

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I. INTRODUCTION

In his recent book *Health, Luck, and Justice* (2010a) Shlomi Segall has forcefully defended and further developed a luck egalitarian account of justice in health. Luck egalitarianism, he says, is "essentially the idea that it is unfair for one person to be worse off than others due to reasons beyond her control" (10). The idea that such reasons are beyond the person's control refers to Dworkin's well-known notion of 'brute luck' as opposed to 'option luck' (Dworkin 1981, 293). Defining brute luck as "the outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not to avoid, in the case of omissions)" (2010a, 20), Segall concurs with the later Cohenite account of responsibility, thereby endorsing the concept of 'reasonable avoidability'.[1] Based on this, Segall sums up his own development of the luck egalitarian account of justice in health by claiming that "society ought to fund biomedical treatment for any condition that:

i. Is disadvantageous;
ii. Could be fixed by biomedical intervention;
iii. It would be unreasonable to expect the individual to avoid" (2010a, 127; 2010b, 348).

Segall strengthens this luck egalitarian framework by adding that besides the demands of justice there are other more fundamental, moral requirements that we ought to fulfil. Meeting peoples' basic needs, Segall thinks, is such a fundamental, moral requirement. This requirement, however, has nothing to do with justice and should therefore not

be affected by peoples' differing exercises of responsibility. The account, in this sense, represents a form of value-pluralism, balancing justice-claims against other responsibility-insensitive moral requirements. This pluralism enables Segall to escape what he, in reference to Elizabeth Anderson, calls "the abandonment objection" (Anderson 1999, 295). Whenever people find themselves lacking basic medical treatment for reasons they themselves are responsible for – implying that luck egalitarian justice in itself finds no ground for treating them (but neither demands *not* treating them) – there are fundamental, moral reasons other than reasons of justice for offering them the needed treatment for fulfilling their basic needs, and they will thus not be abandoned. Segall therefore optimistically claims that "the combination of indeterminate luck egalitarian fairness with the concern for basic needs yields a coherent guide to policy that avoids the abandonment objection" (2010a, 69).[2]

However, this supposedly policy-guiding coherence cannot always be guaranteed. There are cases where the demands of luck egalitarian justice and the moral requirement of meeting peoples' basic needs conflict. Suppose we have two patients equally situated below the level of basic need fulfilment, and because of scarce resources we can only treat one of them. Suppose further, that one of the two is responsible for his or her own condition, while the other's predicament is one that we could not reasonably expect him or her to avoid. In this case, luck egalitarian justice demands that we treat the latter and does not demand that we treat the former patient. However, according to Segall's appeal to the more fundamental requirements of meeting basic needs we ought to treat them both. Thus, there is a conflict here between luck egalitarian justice and meeting peoples' basic needs. To embrace both of these moral demands appropriately Segall suggests a weighted lottery giving priority, but not absolute priority, to the innocent patient (2010a, 72; 2010b, 350). Segall seems to think that this way of keeping balance between justice-claims and more fundamental, moral requirements constitutes the appropriate path for luck egalitarianism to justice in health – remaining luck egalitarian in its core, however, adequately capable of escaping the abandonment objection.

While we do think that Segall in general strengthens the luck egalitarian position, it remains vulnerable to some critical challenges. Below, we shall present three objections to Segall's luck egalitarianism that we take to be severely debilitating. First, we argue that the account is vulnerable to the objection that luck egalitarianism is too expansive, meaning that claims that we do not normally think of as a matter of justice are treated as such. Segall does attempt to defend himself against this critique; however, we will show that his defence misses the core point of criticism. Second, we argue that the weighted lottery presented as a deciding mechanism in cases of resource scarcity unfortunately compromises luck egalitarian justice and that this would repeatedly pose a problem for luck egalitarians due to the fact that scarcity is the standard case of health and healthcare distribution. Finally, as a further objection to Segall's use of the weighted lottery, we show that it tends to intensify blameworthy behaviour.[3]

II. Runners from *Indolentia* – An Elaboration on the Expansiveness Objection

One common critique of luck egalitarianism is that it is too expansive. It seems to expand the range of justice-claims for assistance or compensation beyond what people normally feel they are obliged to provide for others. Segall has recently attempted to defend his position against this objection by discussing the much debated luck egalitarian difficulties with distinguishing between cosmetic and reconstructive surgery (2010b, 352). This section argues that while Segall's defence seems to overcome these specific difficulties it remains unable to cope with the expansiveness objection in general.

Segall notes that in many examples related to cosmetic surgery luck egalitarianism fits our intuitions poorly. For example, many people find that it should be obligatory for the healthcare system to cover reconstructive breast surgery following mastectomy, but reject that it ought to cover plastic surgery for women who feel they would be better-off if their breasts were larger or smaller. However, luck egalitarianism, Segall notes, recommends covering cosmetic as well as reconstructive surgery since "women are (generally) no more responsible for breast cancer than they are for the size of their breasts" (2010b, 351) and thus, it expands the range of justice-claims beyond what we normally accept. According to Segall, then, luck egalitarianism must face the challenge of providing a plausible foundation for prioritizing between reconstructive and cosmetic surgical procedures to defend itself against the expansiveness objection.

Segall argues that luck egalitarians *can* meet this challenge and his argument is twofold (Segall 2010b, 352). Firstly, luck egalitarians are not committed to the view that cosmetic and reconstructive surgery are equally important. Though there are admittedly no internal luck egalitarian reasons for giving priority to the one kind of surgery over the other, there are valid reasons to consider reconstructive procedures to be generally more important than cosmetic surgery, and these reasons can be accepted by a luck egalitarian as well as any other.[4] Secondly, even though luck egalitarians (as well as others) have reason to give general priority to reconstructive over cosmetic surgery, there are situations in which we ought also to expand the range of justice-claims for assistance to cosmetic disadvantages – say, for example, in cases where people feel intensely embarrassed about their appearance.

For the sake of argument, we accept this way of coping with the specific luck egalitarian difficulties related to cosmetic surgery.[5] However, we do not see how this constitutes an adequate defence of luck egalitarianism against the expansiveness objection *as such*. The important point here is that the core of the expansiveness objection is not the specific distinction between reconstructive and cosmetic surgery. Rather, the objection, in our view, is ultimately about the degree of *urgency* of the disadvantages in play. And since Segall provides no criterion for saying when and which disadvantages are *not* urgent, his luck egalitarianism is (still) vulnerable to the expansiveness objection.[6]

So it seems that Segall defends himself against the following kind of objection:

> Since luck egalitarianism fails to acknowledge the priority of reconstructive over cosmetic surgery it expands the range of justice-claims for assistance to cosmetic disadvantages and thus it becomes too expansive.

Whereas the objection that he ought to defend against is rather:

> Since luck egalitarianism fails to provide a plausible criterion for evaluating disadvantage-urgency it tends to expand the range of justice-claims for assistance to also *non-urgent disadvantages* and thus it becomes too expansive.

To see how the latter objection constitutes a problem for luck egalitarianism fully independently of the distinction between reconstructive and cosmetic surgery, consider a case that we shall call 'the runners from *Indolentia'*.

Imagine a nation, *Indolentia*, in which every citizen lives an adequate healthy and otherwise dignified human life. This entails that Segall's appeal to the moral requirement of meeting basic needs is satisfied. Now, suppose that all the citizens are initially at an equal level of functioning much higher than merely having satisfied their basic needs. However, the people of the nation of *Indolentia* are by nature lazy. They do not take pleasure in sports, nor do they engage in any kind of physical exercise in general and as a result all the citizens of *Indolentia* are below their optimal potential health level. If they did exercise, they could enhance their health level beyond the initial baseline for the nation. But as matters are, they do not.

Then, suppose that two citizens A and B decide to enhance their health by regular physical exercise and as a result they agree on a running programme. They both run twice a week, they run the same distance, in the same terrain, and at the same pace – that is, they are performing perfectly equal physical exercise. As a result of this new healthy hobby they both enhance their health level significantly. We can assume that they gain 4 years in life expectancy on average compared to their fellow *Indolentanians* (and, additionally, some would argue, intrinsic benefits from being more healthy). Nonetheless, due to reasons beyond their control (say for example their genetic dispositions) their improvement in health level varies considerably, so that A gains 5 years in life expectancy whereas B gains only 3 years in life expectancy, even though the two have behaved with equal prudence.

How are we to think about this scenario? According to luck egalitarianism, the higher health level of the runners compared to the non-runners is unproblematic in terms of justice. This inequality is the result of different exercises of responsibility and therefore the indolent compatriots have no claim for being compensated by the better-off runners. In terms of *reasonable avoidability*, it would not be unreasonable to expect the indolent fellows to engage in some physical exercise. If they really wished to enhance their health level, nothing besides their own indolence would hold them back. Hence, a claim of justice does not arise. This all seems fairly plausible.

However, attending specifically to the two runners A and B, the difference in health levels between them is, according to luck egalitarianism, unjust. This inequality is not the result of differential exercises of responsibility, but rather a difference in outcome *despite* perfectly equal exercises of responsibility. Moreover, the cause of the inequality is beyond the individuals' control and therefore it would be unreasonable to expect B (or A for that matter) to avoid it. Thus, Segall's pluralistic luck egalitarianism would imply that B has a claim for compensation due to the fact that B only gained 3 years in life expectancy and not 5 years as A did. However, many of us find this inequality irrelevant. Recall, both runners benefit significantly from their change in lifestyle; they now live longer lives; they have much more than they need; and they have more than everyone else (even though everyone else also has more than enough). Whether some health benefit obtained at a health level way above what we consider critical for a life to be adequately healthy and dignified is somewhat larger or smaller is, evidently, a non-urgent matter. It seems to us, and arguably it would seem so to runner B as well, that invoking claims for compensation in such cases would be expanding justice too far. Obviously, since this is not a case of cosmetic disadvantage, Segall's proposed way of coping with the expansiveness objection will not apply here. So the question remains: if people are already more than sufficiently healthy, why should we care about peoples' health being less perfectly enhanced than others' due to reasons beyond their control? Like many others, we have found it counter intuitive that we should and Segall has given us no reason to think otherwise.

We conclude this section that even though Segall defends his luck egalitarian account against the expansiveness objection in one specific area, this defence does not apply to the much more general formulation of the objection stressing the point of disadvantage-urgency and therefore the expansiveness objection still stands.

III. Compromising luck Egalitarian Justice

A very important aspect of Segall's luck egalitarianism is that it is not a 'mandatory-desert theory' since it does not demand, for example, that reckless patients are *not* offered treatment. Rather, it denies that we are *required* to offer reckless patients treatment. So luck egalitarianism does not entail desert-dependency at least in the radical sense (Segall 2010a, 16). However, it does entail desert-dependency in a more moderate sense – that is, it cannot be justified in terms of luck egalitarian justice to offer treatment to a reckless patient while leaving an innocent patient untreated. This is so because though luck egalitarianism is agnostic about whether or not to treat the reckless, it does in fact demand treating the innocent since they have obviously done nothing to deserve their affliction. Therefore, luck egalitarianism is at least moderately desert-dependant. The more fundamental, moral requirement of meeting peoples' basic needs independently of their exercise of responsibility is in some cases, however, directly in conflict with this desert-dependence.

To see this, consider a case that Segall himself addresses: "Suppose the situation is that of a car crash, where one of the injured individuals is the reckless driver and the other, equally needy, is her innocent passenger" (2010a, 70; 2010b, 349). Now, luck

egalitarianism would immediately require treating the innocent patient and not the reckless one which, Segall admits, "might seem harsh on the reckless driver" (2010a, 71). Alternatively, and to accommodate the moral requirement to meet both patients basic needs to some extent, Segall suggests applying a mechanism of a weighted lottery, giving some but not absolute priority to the innocent over the reckless patient – say, for example, that we would 'throw a weighted coin' with the expected outcome of 80 percent in favour of treating the innocent and only 20 percent in favour of treating the reckless.

The puzzling thing about luck egalitarian justice, in this case, is that if treating innocent patients for a health deficit they themselves are not responsible for *is* a matter of justice whereas treating a reckless patients for a health deficit they themselves are responsible for *is not*, then the weighted lottery model is overriding concerns of luck egalitarian justice, when suggesting that reckless patients ought to be given a 20 percent chance of provided medical care at the expense of innocent patients even though they have no claim (of justice) for this. Thus, according to luck egalitarianism the weighted lottery is by definition *unjust* due to the fact that it gives less chance to the innocent than they deserve and more to the reckless than they deserve (in terms of the moderate desert-dependence of luck egalitarian justice). Hence, the weighted lottery model does not uphold luck egalitarian justice. We take it that Segall must agree with this.

As shown by G. A. Cohen, sometimes "we do well to settle for something else" than justice simply because justice is not always attainable (1992, 327). However, this will not help Segall defend the weighted lottery model in the present case. In cases to which the weighted lottery applies, justice is in fact *not* out of reach and thus the weighted lottery model cannot legitimately be suggested as the best possible *alternative* to justice. It is obvious that luck egalitarian justice must be one of the aspects considered in the weighted lottery and it is questionable, therefore, why a luck egalitarian theory of distributive justice would not assign full weight to this aspect. Hence, the weighted lottery model will inevitably compromise luck egalitarian justice in this way in cases of resource scarcity. So, Segall's pluralism, represented by the weighted lottery, does not merely suggest a compromise between justice and what can actually be obtained, but a disregarding of the luck egalitarian justice that *is actually attainable*. Some find this problematic since they take justice to be the "first virtue of social institutions" (Rawls 1999, 3) or at least that it must be "something we take seriously here and now" (Miller 1997, 88).

Now, Segall underlines that this compromising of justice will only occur in situations of resource scarcity. However, resource scarcity is the standard case in health and healthcare distribution, and therefore this problem is omnipresently pertinent for health policy, and thus, luck egalitarian justice is constantly compromised. If luck egalitarian justice is something that we are to take seriously, it seems peculiar that it is to be disregarded due to other moral requirements whenever the presence of resource scarcity sets justice to conflict with these – particularly since such shortages are almost always the case in actual health policy. For a luck egalitarian, this is surely restricting justice too much. The weighted lottery model therefore seems to be a problematic strategy for luck egalitarians to cope with the abandonment objection, since it will inevitably and repeatedly compromise the ideal of justice that luck egalitarianism advocates.

IV. Intensifying Blameworthy Behaviour – The Reckless Road Trip Case

Another crucial problem with the weighted lottery model is related to its potential consequences. Specifically, that it tends to intensify blameworthy behaviour. In this section, we show how this problem arises.

As mentioned above, Segall's pluralistic account is brought about by his wish to avoid the abandonment objection. According to this, it is seen as unjust if someone is left to die simply because they exercise imprudent responsibility (as noted above, Segall finds this 'harsh on the reckless'). So, in the case of the car crash that Segall discusses, in which a reckless driver and an innocent passenger share similar levels of injury, we should not, as luck egalitarianism initially prescribes, give absolute priority to the innocent in situations of resource scarcity. Rather, we should accommodate the abandonment objection by assigning some probability of rescue to the reckless driver. This is the basic tenet of the weighted lottery. Segall's description of his weighted lottery is not very thorough, but it seems fair to assume that the weighing of the two considerations (holding the reckless driver responsible while not abandoning him or her categorically) in the lottery should be based on how much the different considerations appeal to our moral intuitions. Thus, if we create a lottery in which we apply an 80/20 weighing (as we hypothesize above), and thereby let the innocent passenger have an 80 percent chance of being rescued, this would mean that we think that the idea of holding the reckless driver responsible is the more morally important. Furthermore, if Segall believes that by employing the lottery, we are no longer vulnerable to the abandonment objection (which he seems to think, see 2010a, 72) this must mean that the weight given to the reckless driver corresponds to the intuitive appeal of the abandonment objection. Meaning that, if, as in our example, the weight given to the reckless driver is 20 percent, and that exactly this percentage makes us immune to the abandonment objection, then this percentage must be equivalent to the moral remorse of abandoning the reckless were the lottery not employed.

To illustrate, imagine a strictly luck egalitarian society A in which all priority is given to the innocent in cases of scarcity. Thus, when a reckless driver and an innocent passenger or pedestrian are in an accident and it is only possible to save one of the two, this society would always choose to offer treatment to the innocent leaving the reckless to their misery. Now, imagine a second society B, in which they employ Segall's weighted lottery (let us say, again, that they give 80 percent chance of rescue to the innocent and 20 percent to the reckless). According to Segall, this would allow them to avoid the abandonment objection. This must mean that the weight given to the reckless driver (20 percent) somehow translates into the intuitive reluctance that citizens of B have against abandoning the reckless. Thus, when employing the weighted lottery system, the reckless driver is no longer conceived as abandoned. However, the driver seems to become more *blameworthy* from a luck egalitarian perspective. To see this, we need to outline the concept of blameworthiness.

Agents are blameworthy if they act in a way that makes certain negative responses suitable. It is a matter of some discussion when such negative responses are suitable, but

a persuasive (and relatively ecumenical) definition entails that it is when agents fail to live up to moral demands related to the concern we owe each other, and thus, they are blameworthy if they fail to show such concern in their actions (Scanlon 2008, 124). Also, blameworthiness is importantly related to an individual's beliefs about – and attitude towards – their actions, and which consequences they reasonably believe them to have (Scanlon 2008, 123; Parfit 2011, 158). Furthermore, one is usually thought to be *especially* blameworthy if one negligently brings about an inferior state of affairs *for others* (or risks doing so), which for many is due to the importance of consent (Feinberg 1971, 105; 1987, 116). That is why we would say that an agent is very blameworthy when driving a truck haphazardly through a crowded neighbourhood and not very blameworthy when driving haphazardly around a racecourse packed with spectators (who have consented to the risk involved).

With this conception of blameworthiness in mind, imagine that the reckless driver R goes on a road trip through the two societies, A and B, displaying the same level of recklessness in his or her driving in both countries – meaning that the risk of getting hit by R is the same. In both countries the resources are scarce so that only one of two persons in a car crash can be treated. Furthermore, the one who is treated will in both countries be brought back to normal functioning due to state of the art medical facilities.

Now, while R is driving recklessly through A, he or she is relatively blameless since *only R* suffers the potential consequences of his or her reckless driving. We might think R could be blamed for risking his or her own life, but as R is not risking the lives of others, one cannot say that his or her driving constitutes a failure to show the concern R owes them. As we have seen above, risking bringing about an inferior state of affairs for others makes one especially blameworthy, and while driving through A, R's acts do not entail such a risk.

As R continues his or her reckless driving across the borders of B, however, his or her blameworthiness increases. While driving in B, R runs the (20 percent) risk of recklessly causing a car crash after which he or she is given treatment while an innocent passenger or bystander is not. Based on the conceptual outline given above, this act is clearly blameworthy, since R fails to show the concern that he or she owes to others. Thus, although performing identical acts, R's behaviour is more blameworthy under the weighted lottery system than in the strict luck egalitarian society, A, where only *R* runs the risk of injury without necessary treatment. Moreover, the higher the probability allocated to treating the reckless driver, the more blameworthy he or she becomes. Following Segall's luck egalitarian foundation, we should want the blameworthy to bear the cost of their actions, and to bear more of it, the more blameworthy they are. But his weighted lottery seems to facilitate the exact opposite by making the reckless driver *more* blameworthy while *lessening* the cost he or she is expected to bear. This is what we mean when we say that Segall's weighted lottery intensifies blameworthy behaviour.

Segall might contend that the problem of intensifying blameworthiness is outbalanced by avoiding the harshness of the abandonment objection. However, this objection cannot give us a theoretical answer to why we should or should not worry about

blameworthy behaviour, but only what we should do about the *outcome* of such acts. For many critics of luck egalitarianism (including ourselves) this does not pose a problem, since they do not accept that responsibility (and blameworthiness) should play any role when determining the distribution of healthcare to people below a certain critical level of functioning.

V. Conclusion

Although Segall's recent outline of luck egalitarianism seems to bolster the position in general, we have argued that it is vulnerable to at least three crucial objections. First, while Segall attempts to defend himself against the objection that luck egalitarianism is too expansive, we have shown that his defence too specifically focuses on the distinction between reconstructive and cosmetic surgery, and therefore does not avoid the main tenet of the expansiveness objection. Second, we have argued that the weighted lottery presented as a way of coping with the abandonment objection compromises and disregards luck egalitarian justice, and that this would often result in an unjust health distribution from a luck egalitarian point of view. Finally, we have shown that Segall's weighted lottery intensifies blameworthy behaviour, which seems highly problematic to luck egalitarians. Based on these three objections, we conclude that Segall's luck egalitarian justice in health has important defects. Thus, barring further development that would enable the theory to cope with these three objections, Segall's luck egalitarianism in matters of health seems to have struck out.

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NOTES

1. For further discussion on 'reasonable avoidability', see Andersen (295-306) and Weinstock (316-325).

2. The abandonment objection is also discussed by Gosseries (287-295), Weinstock (316-325) and Andersen (295-306).

3. For Segall's response to these objections see below.

4. As examples of such reasons Segall mentions susceptibility to 'moral hazard' and "the fact that a loss of a breast is almost always much worse than having intact breasts that are either 'too small' or 'too large'" (2010b, 352).

5. For discussion, see Nielsen 2012.

6. Segall's adoption of a basic need sufficientarian threshold can be used as a criterion for evaluating disadvantage-urgency. However, this would make the relevance of disadvantages dependent on them being basic and thus restrict his luck egalitarianism too much. For a more detailed discussion on this issue, see Nielsen 2012.

Remarks on Shlomi Segall's Health, Luck and Justice

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I. INTRODUCTION

Shlomi Segall's *Health, Luck and Justice* seeks to defend a variant of luck egalitarianism (LE) as a plausible theory of justice for the distribution of resources conducive to health. The project is motivated by the thought that LE is a plausible general theory of distributive justice, making people responsible for that which they choose, and compensating them for the ills that befall them as a result of bad luck, but that it seems to generate *prima facie* implausible consequences when applied to health. Specifically, it would seem to lead to problematic 'abandonment cases'. Indeed, as Segall recognizes, many health problems arise because of decisions that people make across a whole range of dimensions of human existence, including diet, leisure, and so on. On the face of it, luck egalitarianism would seem to give rise to the conclusion that people who eat unhealthily, or who practice extreme sports, ought to be left to their own financial devices in dealing with the predictable health-related consequences of their imprudent behaviour.

Segall's strategy revolves around a number of philosophical moves, the most important of which seem to me to be the following three.

First, Segall argues that the correct implication of LE is not that people ought to be held responsible for the results of their freely undertaken choices, but rather for the results of actions that it would be unreasonable for society to expect people to avoid. Segall writes: "My view is that we ought to understand 'brute luck' as the *outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not to avoid, in the case of omissions*)" (2010, 20; italics original). This move clearly has as an impact to lessen the range of abandonment cases, as presumably there are choices that people make that have predictably negative health consequences, but that it would nonetheless be unreasonable for the state to expect them to avoid. In what follows I will call this the *reasonability argument*.

Second, Segall makes a *pluralist move*, according to which LE captures some, but not all, of what we owe to one another. Presumably, even the reasonability argument will not eliminate all counter-intuitive abandonment cases. Unless reasonability is defined in a completely circular manner, so that what it is unreasonable to expect people to avoid is precisely to act in ways that do not detract from their health, there will still be people who are left out in the cold by Segall's redefinition of brute luck. The solution put forward by Segall is to argue that justice not only requires that people be compensated for the negative consequences of actions that it would be unreasonable on the part of society to expect them to avoid, but also that there is a requirement on the part of society to address those adverse consequences, the neglect of which would lead to the imprudent's basic needs not being met, even when these consequences flow from actions that it would be reasonable for society to expect the imprudent to avoid.. "The obligation to meet basic needs is a well-entrenched moral requirement in ethics and political philosophy […] Healthcare, on this account, is simply part of the social minimum that society ought to guarantee to its citizens" (2010, 68). I will refer to this move in what follows as the *pluralist argument*.

Third, Segall introduces a prioritarian constraint upon LE in order to block the 'levelling-down' objections that are often targetted at egalitarian theories. According to his view, justice in health requires not that we achieve equality, or that we come as close as possible to equalizing it, but rather that we prioritize the health needs of the least well-off. So the theory as a whole tells us to "neutralize brute bad luck first", and then to "distribute benefits in the order of their moral weight, which, given the principle's prioritarian tilt, implies distributing these benefits according to how much worse off individuals are" (2010, 119). I will refer to this move as the *prioritarian argument*.

I also want to flag another important move made by Segall in the book. It is not directly related to the problem of how to overcome the problem raised by the 'abandonment cases', but rather has to do with the proper focus of the principles of justice derived from the theory. Following a move made in recent writing by (among others) Norman Daniels, Segall argues that we ought to be concerned not just with the distribution of healthcare, but also with the distribution of health states as such, and with the

distribution of those "social determinants of health" that according to many recent accounts have a dramatic impact on health and on the distribution of health states across a population, an impact that is arguably much greater than that of healthcare as such (Daniels 2008). If this is true, Segall claims, then "we ought to broaden the scope of our concern, and rather than look at healthcare exclusively, start thinking about the just distribution of health proper" (2010, 92).

There are many other interesting arguments and ideas scattered throughout this exceptionally rich and path-breaking book, but those to which I have drawn attention and briefly rehearsed strike me as central to the overall argument's architecture. In what follows, I want to say something about all four of these moves.

II. Problems with the Reasonability Argument

Let me raise a first concern. Let me refer to the version of luck egalitarianism that fails to incorporate Segall's 'reasonability argument' as an *unreconstructed luck egalitarian* (ULE). Let me refer to the version of the theory as modified by this argument as *modified luck egalitarianism*.

Defenders of MLE presumably think that their version of LE is better than that of the ULE. Now, they can do so for two kinds of reasons. First, they might think that the wide range of abandonment cases that ULE generates is a symptom of some fundamental flaw in the theory, and that addressing that flaw improves the theory. Or, they might think that there are other flaws in the theory, that are independent of its tendency to generate the abandonment cases, that must be corrected for the sake of the overall justification of the theory. Getting rid of the abandonment cases would be a happy consequence of such a modification, but would not be its principal virtue.

The overall structure of Segall's argument makes it the case that he must adopt the second, rather than the first interpretation of the move to MLE. Indeed, as Segall himself acknowledges, the move to MLE will presumably reduce, but will not eliminate, the counter-intuitive abandonment cases. Unless we move to 'all-luck egalitarianism' (ALE), a position Segall rejects, according to which the circumstances under which we make our decisions are, despite first appearances, in the order of luck rather than real choice, all versions of LE will generate such cases. To the extent that we consider this tendency of the theory to count against it, the only way to save it is to incorporate it within a broader, pluralist theory of justice that includes a 'basic needs' module.

But this is a move that is available to the defender of ULE just as much as it is to the exponent of MLE. That is, they can observe that their theory generates abandonment cases, in perhaps greater quantity than does MLE, and reach for the pluralist fix just as the defender of MLE does. In other words, what is in fact doing the work in avoiding abandonment cases altogether is the pluralist argument, rather than the reasonability argument. As a result, if the move from ULE to MLE is warranted, it must be for reasons that are independent of its tendency to do away with the problem posed by abandonment cases.

The case must therefore be made that, independent of the problem of abandonment cases, a version of LE that incorporates the reasonability argument is superior. We should be worried on this view about what it is that the state cannot reasonably require of their citizens, rather than with what people choose.

The problem is to specify the reasonability constraint that is (i) independently plausible, and (ii) that does not collapse MLE into ALE.

A perusal of the literature on the concept of reasonability suffices to show just how difficult it is to satisfy the first constraint.[1] A prime worry with the characterization of reasonableness has to do with circularity: philosophers will define the notion in a way that 'fits' into their normative theories, rather than providing it with plausible independent grounds. Rawls is a prime example of this tendency. His definition of reasonableness in *Political Liberalism* is such that it overlaps (too) neatly with participation in an overlapping consensus, with little or no independent warrant, or perhaps rather, with the notion's fitting into reasonable consensus *as* its sole warrant.

How does Segall do as far as his characterization of the pivotal notion of 'reasonableness' is concerned? He introduces the notion by pointing to intuitively plausible cases (to do, for example, with the 'unreasonability' of requiring people to reside in certain places rather than others, or to abstain from becoming pregnant), but he otherwise recognizes that the concept is "an ambiguous notion" (2010, 21), although that this ambiguity can be seen as an advantage in that it allows us to define the 'reasonable avoidability' criterion so as to give "due consideration to the changing circumstances of each case" (2010, 22). Now, responsiveness to morally relevant features of specific cases is clearly a virtue of any theoretical account. But that responsiveness cannot be *ad hoc*, rather it must be driven by a stateable set of plausible, relevant considerations.

The problem is to come up with such a set of considerations, given the very wide range of reasons that make it unreasonable for the state to require health-sensitive choices from its citizens, or to make them responsible for the costs of their not having made such choices. Segall does attempt to provide us with such criteria at two points in the course of the argument. The first attempts to harness the notion of *effort*. In many passages, Segall singles out *effort* in promoting one's health as determinative of whether fairness requires that one's health problems be taken up or not by a public healthcare system. He writes for example: "Fairness requires assigning priority to improving the health of an individual if she has invested more rather than less effort in looking after her health" (2010, 119).

Now consider the case of the *epistemically challenged health nut*. This is a person who scours the bookshelves of the local bookstore in search of yet another fad diet to lose weight, and who is a devotee of the local homeopath, who they constantly consult in order both to address whatever health issue they may have, and to prevent problems from cropping up.

They clearly expend a great deal of effort on their health. But this effort is not effective, or not as effective as it might be, in promoting their health, because they are mistaken as to the way in which they go about attempting to promote their health. Thus, imagine that their health ends up being no better than that of the couch potato, who,

though they do nothing to promote their health, also do not expend any misdirected effort.

How might Segall's theory address this case? There seem to be two ways to go, each of which has costs. One is to bite the bullet and to say that effort is what counts, regardless of its effect on health. But this seems wrong. Every year, people in the developed world spend billions of dollars and countless hours investing in various forms of health quackery, to limited effect. It seems counter-intuitive for a theory to reward such counter-productive behaviour. The other is to build an epistemic component into the criterion of effort. According to this view, the health needs of those who *effectively* expend effort upon health will be prioritized. Again, this would lead to highly counter-intuitive results. For one thing, knowledge about health and healthy lifestyle probably presents a considerable socio-economic skew. It is likely concentrated in the upper reaches of the socio-economic ladder. Prioritizing the health needs of those whose health-directed efforts are grounded in a knowledgeable perspective risks reinforcing existing socio-economic inequalities.

The second attempt at providing us with a clear sense of how the notion of reasonableness might work within the context of a modified luck egalitarianism has to do with culture. Now, it seems plausible to suppose that it would be unreasonable for the state to expect citizens to abstain from practices that are not health-promoting where these practices have cultural import. Different cultures for example have different dietary norms. Throughout my childhood, my Ashkenazi Jewish grandmother served me chicken soup with the chicken fat stirred in rather than skimmed off. Our Japanese neighbours down the street undoubtedly served their kids impeccably healthy fish in moderate quantities. Is it 'reasonable' for society to expect people to change their diets, or to pay for the health consequences when these are deeply culturally rooted? There would seem to be limits on what the state can reasonably expect here, even with a view to promoting health. In other words, in the same way that it may be the case that surfers should be fed, perhaps *shmaltz fressers* ('fat devourers') should on at least partly similar grounds be treated when their diets lead to health complications.

The risk, however, in following this logic is that it reintroduces ALE, or something quite like it, through the backdoor. Indeed, as cultural beings, there is very little that we do that is not in some sense or other rooted in 'culture'. Is there a way in which we can prevent culture from 'swallowing up' the whole domain of individual responsibility that Segall wants to salvage in his move away from ALE?

Segall distinguishes between a variety of ways in which culture can affect medical need, some of which in his view should be catered for by a public medical system, others that should be set aside. They are on a scale from culturally driven and culturally aggravated needs and culturally determined needs, and last, culturally aggravated preferences.

Considerations of space prevent me from spelling out in any detail how Segall distinguishes between these four categories. For the purposes at hand, I will assume that the distinction between need and preference is intuitively well understood by the reader, and spell out the manner in which Segall reaches the conclusion that a just system of

health ought to be responsive to needs borne of culture, but ought to reject claims that are based in preference.

The main move in this connection is given by Segall in the following passage:

> The relevant criterion for determining what counts as a need [...] is what an outside observer would identify as constituting a decent life in a certain community, and not (or not necessarily) what members of that community consider to constitute a decent life (2010, 147).

In Segall's view, there is what is essential to a decent life within a culture, and there is what members of the culture *think* is essential to it. A just society owes people compensation for the ills that befall them as a result of the first, but not of the second.

Now, this is an odd distinction. Surely there is no fact of the matter about what counts as a decent life in the community that is independent of the beliefs that people have in the community about what a decent life is. Indeed, the qualifier 'decent' here is not meant to pick out some independent aspects of what a decent life is, independent of all cultural affiliation. If cultural specificity is to be given its due in this context, it must be the case that 'decent' refers to the requirements of a life that is seen as adequate *for a member of the community or culture in question*. And that cannot be determined in a manner that is entirely independent of the perspectives of participants in the culture.

What perspective does the observer take in Segall's view? If he is placing himself completely outside the community and its regnant assumptions, then he is judging what a decent life is not in *this* community, but in *a* community. If this is the criterion that Segall intends, then he is only paying lip-service to the importance of including cultural identities and norms within the list of those dimensions of human life from which it would be unreasonable to expect people to prescind for the purposes of determining whether or not they should be considered responsible for their health-affecting behaviour. In order to make plausible judgments on what counts as a decent life in this community, the observer needs to hold at least certain important aspects of what counts as a decent life in the community as question constant. And it is difficult to see how, when we are talking about cultural matters, we can wholly avoid referring to people's cultural beliefs about what is essential to a decent life in the community in question.

These matters will be inherently controversial. Ultraorthodox and reformed Jews will clearly not agree as to what is essential to a decent Jewish life. What's more, a state that decides to weigh in on one side or the other of such debates faces daunting practical and ethical obstacles. What legitimacy can the state claim in taking sides, and what authority can it invoke in taking sides that could not be justifiably challenged by the group whose views about what is essential to a decent life are taken to be mistaken? It is difficult to see how a criterion of reasonableness that could not be reasonably rejected by the losing side to a debate might be elaborated in this area. If this is the case, then it will be difficult to hive-off a category of culturally driven health preferences for which people ought to be able to take responsibility, and which thus prevents the category of culturally

determined health preferences from collapsing into that of culturally determined health needs.

A final problem for the conception of reasonableness that Segall must provide if he is to vindicate MLE has to do with the way in which these two components of what would ultimately be a quite complex, modular notion of 'reasonable' work together. Indeed, what if one were to discover that a practice or ritual that one views as central to one's culture is bad for one's health. Should one's reasonableness be measured by the degree to which one seeks to overcome that practice, or by the degree to which it is in fact central to one's culture? Clearly, given the number of quite different ways in which it seems intuitively plausible to claim that the state would be unreasonable to require individuals to abstain from behaviour that impacts their health negatively, conflicts and tensions will arise among the various 'local' conceptions of reasonableness (to do with culture, effort, and so on) that we will need in order to account for these intuitions. A meta-conception of reasonability will clearly be required. I do not see any such account emerging from the various passages scattered across Segall's book.

Let me take stock. We have seen that given the availability of the pluralist argument to the defender of ULE, the defender of MLE must find some independent warrant for the pluralist argument. We have seen that, at least in one fairly central area, it is quite difficult to see how this requirement can be made good.

In closing this section, I want to raise a general doubt that emerges from the foregoing considerations for the general structure of the argument. Segall takes as read that, given the fact that ULE generates morally troubling abandonment cases, it needs to be modified (through MLE) and supplemented by an account of basic needs. He never really considers the possibility that what the abandonment cases reveal is that LE is an inadequate account of justice, in whatever form we give to it. As we have seen, unless we revert to ALE, which denies people responsibility for anything, any form of LE will generate abandonment cases, and some will in addition be saddled with onerous philosophical IOUs, to do, for example, with concepts such as reasonableness that are used to find a plausible middle ground between ULE and ALE. Why not recognize that something like a basic needs account, perhaps duly modified by a prioritarian rider (although I will have things to say about that later) provides us with an adequate account about what justice in health requires? What work is still being done by LE once it has been paired with a basic needs account and modified through a (controversial) reasonability constraint?

III. Problems with the Move from Healthcare to Health and its Social Determinants

A second set of questions I wish to raise has to do with the way Segall defends the philosophical issues that arise once one broadens the focus of distributive justice in health away from just health *care* to the myriad other 'social' determinants of health (SDH). He argues, rightly in my view, that to limit the purview of a theory of justice to healthcare is

to fetishize something that may have ultimately quite a limited impact on people's health. Rather than focusing exclusively on the distribution of healthcare resources, we should also take an interest from a justice point of view on the distribution of health *states*. We ought in other words "to broaden the scope of our concern, and rather than look at health care exclusively, start thinking about the just distribution of health proper" (2010, 92). So, we ask ourselves, are people healthier or less healthy than they might otherwise be in virtue of determinants that they could not have reasonably been expected to avoid. If the answer is yes, then there is *prima facie* injustice.

But I wonder whether this is the direction that the discussion should be taking after the truth about social determinants of health, if it is a truth, is taken into account. Note, first, that health states are not something that can be the objects of distributive policies. At best, we can distribute resources that conduce to health, such as healthcare and the 'social determinants of health', with the hope that the correlations between the patterns of distribution we achieve and the distribution of health states we think is just is robust. So we think about how to distribute healthcare, not because we fetishize scalpels, pills, and hospital beds, but because we think they make a difference to health.

If what social determinants of health theorists hold turn out to be true, then we should be inquiring into the best way in which to distribute not health states, which are, *ex hypothesi,* undistributable, but rather the revised and enlarged set of determinants of healthcare. In other words, a theory of distributive justice in health goes from being a theory about the distribution of healthcare to being a theory about the just distribution of housing, education, leisure time, in fact pretty much everything, because there are not that many aspects of people's lives the differential distribution of which does not have differential impacts on health.

The conclusion to draw from this might be that once one attends to SDHs, then the theory of distributive justice with respect to health just fades into a general theory of distributive justice, one that is concerned with the distribution of goods of all kinds.

But that would be a mistaken inference.[2] For we would not be asking, say, how educational resources should be distributed in a just society, but rather, how they should be distributed in order to generate the pattern of health states that we think is just, given what we can and cannot reasonably expect people to do to promote their own health. And I think we want to at least think hard before we equate them in this way.

If we accept that there is a difference between a theory of justice and health, and a theory of justice, full stop, then we need to think about how the two relate to each other. That is, we need to think about what has to give way when the two theories deliver different judgments with respect to a given resource: are we aiming to achieve a just society, or a justly healthy society?

Another way to pose the question: imagine a society that has fully instantiated a theory of justice that we think is maximally plausible. Imagine that in this society, there are still health inequalities that are caused by decisions people make that it would be unreasonable for society to expect then not to make, and that are thus unjust, as viewed

through the lens of our health-related view of justice. What do we do? Adjust health to (overall) justice, or overall justice to health?

At one point in the book, Segall concedes that the theory of justice with respect to health is only one part of an overall theory of justice. Yet he helps himself to the simplifying assumption that these two will end up overlapping to a significant degree. He writes as follows:

> If health underlies much of our welfare, then it would follow that a theory of justice in health would not deviate much from a more comprehensive theory of he just distribution of (opportunity for) welfare. Or, at the very least, it might be suggested that the pursuit of justice in health would not clash with or undermine the general quest for distributive justice" (2010, 95).

This is in my view very quick indeed. It rests on the assumption that health is (almost all) there is to welfare, and that welfare is (almost all) there is to distribute in a scheme of distributive justice. But the distribution of many of the goods with which a theory of distributive justice ought to be concerned (think of education, housing, and the like) must be responsive to a variety of normative pressures, which include welfare to be sure, but which include other normative dimensions as well. Think of education: the question of how school admissions are handled is clearly one to which a theory of distributive justice must speak. But is it clear that the way in which competition for admissions (say) to elite institutions of higher education ought to be handled is entirely a question of determining which pattern of distribution would best conduce to overall health or welfare? Unless one adopts a conception of welfare that is so capacious that it risks becoming meaningless, the answer is quite clearly that we should resist such an assimilation. Distributive justice can never simply be about maximizing the degree to which the distribution of scarce goods best conduces to overall health, to the reduction of health inequalities, or to some other health-related outcome. And so the relationship between distributive justice about health and overall distributive justice that incorporates health as well as a host of other goods will perforce be more complex than Segall lets on.

I want to end this necessarily incomplete consideration of the wealth of themes contained in Segall's book by pointing to another way in which he may be insufficiently sensitive to the complexities and trade-offs involved in an overall theory of distributive justice incorporating, but not reducible to, a theory of distributive justice relative to health.

In his discussion of the relative costs to the healthcare system of healthy and unhealthy patterns of behaviour, Segall takes up the question of whether a responsibility-sensitive luck egalitarianism should not end up taxing long livers because their choices are in fact more costly than that of unhealthy persons. Long livers may over time end up costing the healthcare system more than smokers simply because they are around for so much longer, and end up accumulating age-related rather than behaviour-related health needs. Absent some moralizing justification, why should we treat the long liver

differently from the smoker, if what we are trying to track is the degree to which choices impact on healthcare needs?

Segall writes as follows: "Pursuing the kind of lifestyle that results in a long and healthy life is precisely what any healthcare system is supposed to promote. Al long and healthy life may represent a financial burden, but it is a necessary, and in fact a welcome, one" (2010, 83).

Consider the following possibility. Imagine that we are able to figure out what the maximum amount of money we are able to spend on health is, given other budgetary constraints. Imagine a society of people who all make consistently responsible choices with respect to their health. Now, imagine that given the unavoidable problems that the aging even of the very healthy involves, and the problems that befall even the very reasonable due to brute bad luck, it is reckoned that the system could not afford people living more than 90 years.

Now imagine some individuals, unsatisfied with a 90-year life span, decide to take steps to increase their longevity. They adopt a hyper-low calorie diet, which has been scientifically shown to extend life span. Or they engage in gene replacement therapy to replace their aging cells with new ones, and to extend their life-expectancy to 150.

It is not clear to me that these people are not engaging in a practice that is problematic in a way quite analogous to the way in which smokers do, namely by unnecessarily burdening the healthcare system, providing themselves with benefits that are not necessary to the leading of a healthy life, and taking more than their fare share of the resources in the process.

Now, I admit that this case is far-fetched. I merely mean to make some trouble for the fairly unilateral way in which Shlomi states that "pursuing the kind of lifestyle that results in a long and healthy life is precisely what any healthcare system is supposed to promote" (2010, 83). Given a fairly fixed resource pie, there may be an age beyond which it is no longer the job of a healthcare system to promote longevity. And this limit only appears clearly once one realizes that health is but one good among many that must be secured by a theory of distributive justice, and by associated institutions.

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Notes

1. See my "A Neutral Conception of Reasonableness?" *Episteme* 3/3 (2006): 234-237.
2. What follows draws from my "How Political Philosophers Should Think About Health." *Journal of Medicine and Philosophy* 36/4 (2011): 434-445.

Health, Luck, and Justice *Revisited*

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I. Introduction

I am grateful for the opportunity to respond to the papers in this volume. I cannot, of course, hope to do justice to all the points they raise. The book canvases a rather comprehensive thesis, and correspondingly, critics pick out a wide range of issues to comment on. There are many points, therefore, to which I cannot respond. Instead, I shall focus on three major themes picked out by the commentators. I pick these three issues over the others not – or not only – because I have no good answers to the others, but because they are ones that have cropped up in other published reviews of *Health, Luck, and Justice* (*HLJ*). The three issues are: value pluralism (including the way in which the concept of basic needs features in my account), the relation between equality and responsibility, and the concept of reasonable avoidability (including the way it bears on the special case of smoking).

II. Value Pluralism

Luck egalitarian (LE) justice in health and healthcare can be criticized for the many counterintuitive policies that it seems to generate. On the one hand, LE health is said to abandon reckless patients. On the other, it has the no less counterintuitive consequence of using the healthcare system to treat individuals for what seems like non-medical disadvantages (e.g. looks, intelligence). LE health is criticized, therefore, for being both too narrow and too wide. In responding to both of these objections, my strategy in the book was essentially the same. Consider my response to the wideness objection. LE health indeed identifies a duty of justice to rectify brute luck disadvantages in health, even when they exceed the traditional preoccupations of medical care (e.g. cosmetic surgery for the less good-looking). At the same time, however, the LE account can accommodate prioritizing the more traditional medical conditions, this due to other moral considerations (e.g. the severity of the need, moral hazard in the case of free cosmetic surgery). The same goes for the narrowness objection: LE health does not *require* treating the imprudent, but neither does it prohibit doing so. In fact, it recognizes that we might be under obligation to do so due to other moral considerations (basic needs, efficiency, compassion). So my response to both the narrowness and broadness objection relied on the same simple observation: principles of justice are not rules of regulation. They do not presume to capture the best, all-things-considered, principles for regulating health policy.

It follows that the criticism (such as by Lasse Nielsen and David V. Alexsen in this volume) that LE health does not give us a good criterion for prioritizing reconstructive surgery over cosmetic surgery misses the point. It was never meant to. Rather, the

pluralist approach adopted by the sensible luck egalitarian leaves plenty of room for considerations *other than* those of fairness that can help shape a set of desirable rules of regulation. Suspicion of moral hazard, the requirement of publicity, basic needs, concern for efficiency: all these are moral reasons that are *external* to fairness, and when traded off with it yield an attractive health policy. That policy is not entirely just, but is the most desirable one all things considered. In that context, I recommend reading a previously unpublished paper by G.A. Cohen which has recently come out in the new collection edited by Michael Otsuka. It is entitled (appropriately enough) "How to do Political Philosophy". Cohen writes there: "Not everything that the state should do is something it should do in the service of justice" (2011a, 227). It seems to me that some of the criticism levelled against luck egalitarian justice in health stem precisely from failure to take heed of this straightforward but important distinction. Cohen further writes: "What justice is, what the state should do, and how social states rank normatively, are, I say, distinct questions. […] Great masses of literature ranging from the discussion of luck egalitarianism across to the trolley problem fail to make the needed distinctions at pertinent points" (2011a, 228). A similar failure, it seems to me, takes place with regard to the debate about luck egalitarian justice in health.

Criticizing my response to Norman Daniels' narrowness (abandonment objection) and broadness objections, Nielsen says that it relies on a problematic "clear-cut separation of justice from other values" (2011). But for the luck egalitarian there is nothing problematic about this separation, and the more clear-cut the better it is. It is, in fact, one of the main features distinguishing LE from Rawlsian justice. Moreover, this trade-off of values is essential to the application of LE to any policy area. It is, for example, no embarrassment to my account that it answers some objections to LE justice in health with the aid of sufficientarian principles (see the point raised by Axel Gosseries). The overall desirable health policy it envisages trades off egalitarian principles of justice with some sufficientarian concern for basic needs. Nielsen says that for him "compassion and justice are inextricably intertwined" (2011). But the luck egalitarian flatly denies this. On the luck egalitarian reading, "justice can be mean and spiteful, but it's still justice even then: we shouldn't confuse different virtues" (Cohen 2011a, 229). If we want, Cohen says, that 'mercy season justice' (as Portia pleads in *The Merchant of Venice*), then we must first keep the two values distinct. We must, in other words, establish what justice, pure and simple, requires, and only then trade it off against other concerns.

III. Value Pluralism and Basic Needs

My value-pluralist account appeals to the non-fairness based value of meeting basic health needs. But Nielsen says that luck egalitarianism thus becomes a second-order principle and moreover, only in cases where basic needs do not settle the matter. Daniel Weinstock puts the same point even more forcefully and questions whether, once the notion of basic needs is adopted, anything is gained by sticking to luck egalitarianism. I have no quarrel with Nielsen's characterization. But both his and Weinstock's criticisms miss an important point, namely, that considerations of basic needs rarely do settle the

matter. This is surely the case with regards to actual policy debates, like the one currently taking place in the US, where enormous inequalities exist between those who do not have their basic needs met on the one hand, and those who have much more than their needs catered for by private insurance companies. Importantly, luck egalitarianism has something to say about the distribution of health and healthcare at all levels of distribution, that is, both *above and below* the threshold of basic needs. The same cannot be said for sufficientarians, such as Elizabeth Anderson and her ideal of Democratic Equality.[1] Let me elaborate.

Luck egalitarians, unlike Sufficientarians, insist on distributing health and healthcare fairly even when everyone has enough (whatever that may mean). But they also have something to say about a fair distribution of health and healthcare below (and not just above) the threshold of sufficiency. The weighted lottery that I employ (see the comment by Nielsen and Alexsen) shows this. When confronted with two patients with acute needs, luck egalitarianism, at least in its strict reading, tells us to prefer the one who is worse off, and moreover less responsible for his or her plight. Thus, even if luck egalitarian justice does play second fiddle to the requirement of basic needs, it is still an important fiddle, and one that has implications both above and below the level of basic needs. There is thus a lot to be gained from pairing basic needs with luck egalitarian justice.

Let me make one more remark about the mechanism of a weighted lottery with which Nielsen and Axelsen take issue. According to my account, the weighted lottery is actually offered as a concession, as a means of seasoning justice with mercy, as it were. If one happens to find the weighted lottery even more harsh than the automatic preference for the innocent patient (say, because one thinks that losing the draw, against the odds, is a further blow to the innocent patient) then this means that one should simply not adopt it (the weighted lottery) to begin with. All the better for (pure) luck egalitarian justice!

IV. Responsibility, Desert, and Fairness

Nielsen attributes to me the view that while responsibility matters, it is not all that matters. Or alternatively, that responsibility matters "other things being equal" (Nielsen 2012). But that is not my view. My view, rather, is that responsibility *does not matter at all*. To put it differently, in my view, responsibility has no value in and of itself. It is not so difficult to see why. If responsibility did have some independent value, LE would be concerned with matching individuals' welfare to their level of responsibility (or prudence). It should have bothered us, for example, that two individuals are *equally* well-off despite being unequally prudent. But I explicitly deny this (Segall 2010, 14-19).[2] LE is not desert.[3] In my view, then, responsibility has no independent value. Rather, responsibility plays a very limited role, namely to inform us what equality is.[4] It tells us that it is more urgent, morally speaking, to curb disadvantages that are not the agent's fault. Importantly, that does not mean that egalitarians seek to pattern distributions according to degrees of personal responsibility.

To further illustrate this, consider Richard Arneson's example of preferring the innocent group of children to the reckless group of hikers, invoked by Nielsen (2012).

Responsibility here does not matter because of some backward-looking consideration of rewarding individuals according to their desert. Nor does it matter in a forward-looking way, in the sense of incentivizing prudent action.[5] Rather, the preference for the prudent children (over the reckless hikers) is motivated by the judgment that their disadvantage is more urgent, morally speaking, because it is not their fault, whereas the hikers' is. It is *fairness* that requires that the former be cared for first, not responsibility or desert.

The confusion of the luck egalitarian position with some ideal of desert is unfortunate. At the very introduction to his contribution, Andersen imputes to me the view that justice "requires individuals with risky behaviours to bear the related costs" (295). But I emphatically deny this. My position, rather, is that justice does *not* require aiding those with risky behaviour. This is not the same thing, and it is precisely this type of confusion with desert that we should be careful to avoid.

V. Reasonable Avoidability

Martin Andersen and Daniel Weinstock criticize my use of the idea of reasonable avoidability. Andersen in particular offers a sophisticated examination of its potential interpretations. I concede that I did not say much in *HLJ* about what reasonable avoidability (RA) exactly is. But I also do not think that I should have said *much* more than I have. True, reasonableness is a fuzzy notion (see Weinstock's comments on this). But fuzzy does not mean empty. Cohen for example, also writes that "the notion of reasonableness is fuzzy, not, to be sure, through and through, but at the edges and some way in" (2011d, 205). Reasonableness, then, can serve as a useful litmus test. It is certainly one that political philosophers (and legal theorists) are no strangers to.

Now RA, as Andersen and Weinstock rightly point out, is supposed, on my account, to replace the cruder notion of 'responsibility'. But the problem, in reply to Weinstock, is not (or not merely) that crude, un-reformed, luck egalitarianism does not handle abandonment cases well. The problem, rather, is that crude luck egalitarianism simply gives an implausible theory *of justice*. To see this it is worthwhile recalling the question to which RA is supposed to be the answer, namely: when is it unfair to allow individuals to bear the cost of their own actions and omissions. And the very simple, although in some people's view perhaps circular answer is: when it would be unreasonable to expect them to avoid those actions. It is obvious that actions and omissions that the agent *could* not have avoided fall outside RA. That is, it would obviously be unreasonable to expect individuals to avoid actions they could not control. RA, thus, includes first actions that the agent could not have avoided. But it adds a further test. It is not only actions that agents could not avoid, but also actions that, even if they could avoid them, it would have been unreasonable to expect them to do so. I could have avoided walking down the street, an action that resulted in your un-secured hammer falling on my head. In that sense my injury was as much my responsibility as yours (Ripstein 1999, 36-37). But (under normal circumstances, at least) it would have been unreasonable to expect me to avoid doing so (walking down the street).

How, then, should we understand 'actions that it would be unreasonable to expect the agent to avoid'? Is it simply overly risky activities; is it activities where the welfare/risk ratio is unfavourable; is it something most people do (all of which are interpretations Andersen imputes to me)? Although all of these characteristics touch on reasonable avoidability, none of them captures it fully. If I had to try and explicate what it is unreasonable to expect individuals to avoid (and I am now actually not sure that I do), I would say that it is *actions that agents generally have a vital interest in exercising, and/or actions that society has a vital interest in having exercised*.[6] The choice to walk down the street makes me as responsible as you are for my injury: had I stayed at home my injury would have been prevented. But there is a vital personal interest in being able to walk down a street. Suppose, to take a different example, that despite explicit warning signs, I wander into a construction site and walk about helmetless. In that case, I am not only causally responsible (as I was in the previous example), but also responsible in the sense relevant to luck egalitarians. It was reasonable to expect me to avoid doing so. We think that, under normal circumstances, individuals do not have a vital interest in wandering helmetless into construction sites.

Consider, then, some of the original examples I have used in the book. There is both a personal and social interest in couples having babies (and where there is not [or more accurately, when the social and personal interest clash], say, in overpopulated countries, LE would not object to restrictions of the 'one child policy' type). There is a social interest in having fire-fighters jump into burning buildings. We do we not want *everybody* jumping into burning buildings, but we do want the most qualified person on the scene to do so.[7] We have an interest in people settling down in earth-quake-prone areas of California,[8] and when we do not – when the risk reaches a certain point – then, settling there turns into a matter of option luck.[9] In contrast, there is certainly social value in individuals emulating Mother Theresa, but it cannot be said that there is a *vital* general personal or social interest in everyone adopting such a lifestyle. And indeed, we do not commonly think that leading a life of total self-sacrifice is something that it is unreasonable to expect the individual to avoid (and consequently, bear the price of it if they do not). In contrast, we think there is some great personal value at stake in fulfilling general moral and religious duties (David Alvarez highlights this aspect of my account).[10] This explains why luck egalitarians are typically multiculturalists: they think that it is unreasonable to expect individuals to refrain from fulfilling (non-idiosyncratic) religious duties.[11] They think it is unfair for individuals to be disadvantaged by their religious beliefs (Cohen 1999).

Is Smoking Reasonably Avoidable?

Armed with this more detailed understanding of reasonable avoidability we can turn to Andersen and Weinstock's specific objection with regard to smoking. If smokers ended up saving the healthcare system money, would that make smoking reasonably unavoidable? Would it make smoking a matter of brute luck? Weinstock and Andersen take me to task for the negative answer I give in *HLJ*, so let me try and reply.

Notice that in a way this objection is similar to Ronald Dworkin's famous Jude objection to equality of welfare (Dworkin 2000, 58). If you recall, Jude has cheap tastes and consequently requires few resources, less than his equal share, to achieve equality of welfare. He then consciously cultivates some expensive taste (to travel to Pamplona and watch bullfighting). Crucially, to satisfy this new preference, the amount of resources needed would still fall short of the average (that is, his equal share). Advocates of equality of welfare are forced to grant Jude his request, which Dworkin thinks is counterintuitive. Switching from equality of welfare to equality of *opportunity* for welfare, as Richard Arneson (1989) has shown, avoids this counterintuitive result. Proponents of equality of opportunity for welfare (myself included) would thus deny Jude the travel allowance.[12] So *if* your intuition is (like Arneson *and* Dworkin) that Jude deserves no reimbursement for his voluntarily-cultivated taste for bullfighting, then you should also think that smoking (in as much as it is an expensive taste [a controversial empirical matter that I of course assume merely for the sake of argument])[13], even if it does save the healthcare system money, deserves no compensation.

The van Baal thesis (let us call it that),[14] according to which smokers save the healthcare system money, cannot be used as an objection to my account without reference to some fair and equal share of the healthcare budget. The smoker, just like Jude, says: I concede that my need for compensation arose out of a voluntary decision on my part. But my claim is still for less than my equal share of the healthcare budget. The two claims are thus identical. Advocates of equality of opportunity for welfare (as distinct both from equality of resources, and Cohen's 'equal access to advantage') treat Jude and the smoker's claims in tandem. To both Jude and the smoker they reply: our principle of justice never promised to allocate equal shares of the healthcare budget. It rather promised to prioritize the needs of those who are worse-off, and crucially, through no fault of their own.[15] All of this is consistent with the understanding of reasonable avoidability provided here. Smoking might save money, but that does not mean that society has a vital interest (for that, or for any other reason) in people smoking.

My reply to Andersen's objection ties in with my reply to Gosseries's objection to my account of Roger the violinist. Gosseries objects that my refusal to grant Roger's desire for a Stradivarius must be rooted either in some concern for moral hazard, or in a paternalist worry, or in some illegitimate (in my terms) distinction between normal health and enhanced health. It is not. The reason my account would deny Roger the expensive violin is premised on the idea that equality of opportunity for welfare mandates the removal of the root cause of one's disadvantage. What distinguishes EOP for welfare is that it is committed to removing the obstacle to a person's welfare, rather than to guaranteeing some equal level of welfare. As long as it is possible to fix the disadvantage that constitutes the obstacle to one's welfare then that is what we should do. Only when that is impossible should we resort to compensation (in cash or in kind – e.g. an expensive violin). The reason behind my denial of the violin, then, is an egalitarian one, not paternalist, nor one concerning moral hazard. Rather, it follows from identifying the currency

of egalitarian justice, namely opportunity for welfare. In a way, Roger's claim is similar to a claim by an African-American who is victim of racism (Segall 2010, 132). The latter may ask for a skin colour changing operation (or indeed for a monetary compensation) for his brute luck disadvantage. But as long as it is possible to fix the root cause of the disadvantage, namely, the fact of racism, we may not resort to other forms of rectification, such as changing people's skin colour. It is not paternalist to refrain from doing so, it is egalitarian.

IV. Conclusion

In these comments I only touched on three themes: value pluralism, the relation between responsibility and equality, and the notion of reasonable avoidability. The commentators have covered much ground in their thoughtful and detailed contributions, and I was not able to do justice to all of the good points they have raised.

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NOTES

1. This is one crucial difference between egalitarian and sufficientarian principles. This is partly why I think Axel Gosseries is wrong to criticize my portrayal of sufficientarianism as a non-egalitarian principle.

2. See also my 'Why Egalitarians Should Not Care about Equality', *Ethical Theory & Moral Practice*, http://www.springerlink.com/content/w900138t8k215745/.

3. I concede, though, that there is disagreement here among luck egalitarians (between standard LE on the one hand, and what is sometimes known as desert, all-luck, or choice-egalitarianism on the other).

4. Arthur Ripstein, who Andersen quotes, similarly writes: "The idea of responsibility only makes sense with relation to the idea of equality" (1994, 21).

5. I deny, then, the view imputed to me by Andersen that 'reasonable avoidability' encompasses considerations of incentives.

6. Is this a moralized account of responsibility? That question assumes that a natural account of responsibility exists. But there is no such account. Think again of the hammer example. This shows, as Ripstein says, that "the notions of responsibility and duty cannot be separated, nor reduced to quasi-empirical measures such as control" (1994, 7). Notice also that if RA is guilty of being a moralized notion then it is not alone in doing so. Canonical statements of LE also contain the phrase 'for no choice or *fault* of her own'. See Cohen (2011c, 139, n. 27).

7. Ripstein similarly writes: "The reason that rescuers are treated differently than others who jump onto railroad tracks is that rescuers are behaving reasonably" (1999, 125).

8. In this I find myself in a surprising agreement with Elizabeth Anderson. "We share an interest in people choosing to mine or farm, to work in areas prone to storms and earthquakes, to deposit their money in banks and provide for retirement in pensions" (Anderson 2008, 255).

9. See also Nir Eyal (2007, 11).

10. Alvarez's main criticism in his paper, that my account of global luck egalitarian justice in health takes the division of the global system to nation-states for granted, is simply wrong. I do no such thing. The question I ask in chapter 11 of *HLJ* is whether global health inequalities in the world as it is are unjust. That hardly implies an endorsement of the current global political system. So to Alvarez's question: 'isn't health truly without borders?' I answer in the affirmative. Does that mean that a (luck egalitarian) theory of health equity should have nothing to say about the justice of health distribution under an international global order? No, it does not.

11. I say 'non-idiosyncratic' because luck egalitarians who are multiculturalists would not give blanket coverage to all religious disadvantages. For example, if a Jehovah's Witness is struck by a car and then bleeds to death due to his or her refusal of transfusion, on my account his or her relatives would be entitled to compensation for the injury, but not for the (wrongful) death. On the legal aspects of this issue, see (Ripstein 1999, 128).

12. This is not un-controversial, I should say. Cohen, for example, finds this counterintuitive (2011b, 64).

13. In discussing the example of smoking we are setting aside many complicating issues that it may generate, such as the fact that different people find it differentially hard to quit smoking. It would thus seem unfair to treat all smokers alike in that respect. This particular problem can be addressed by employing John Roemer's proposal of neutralizing the impact of social class on effort by looking at the mean level of effort typical of the particular socio-economic class the patient belongs to (see my discussion in *HLJ*, 61-62, 81). The same method, notice, effectively silences both Weinstock's counter-examples of the 'epistemically-challenged health nut', and the one about culturally-induced health habits (on the latter see *HLJ* chapter 10). The socially-induced epistemic gap in health-consciousness could be neutralized by Roemer's method.

14. See Pieter H. van Baal *et al.* (2008, 242-249).

15. Daniel Weinstock objects that my reply to the Baal thesis would compel me to divert healthcare resources to individuals who, through careful investment of time and money, have reached the life expectancy of 150. After all, they, in contrast to smokers, have led an exemplary prudent life. But we can now see that the prioritarian element incorporated in my account neutralizes that problem. We may care for the health needs of those Methuselahs only once we have catered for the health of all the others who are worse-off than them.